Calendar No. 350

98TH CONGRESS *1st Session*	SENATE	REPORT No. 98-224

COMPREHENSIVE FORFEITURE ACT OF 1983

REPORT

OF THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ON

S. 948

SEPTEMBER 14 (legislative day, September 12), 1983.—Ordered to be printed

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COMPREHENSIVE FORFEITURE ACT OF 1983

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Mr. THURMOND, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 948]

The Committee on the Judiciary, to which was referred the bill (S. 948) to reform Federal criminal and civil forfeiture, reports favorably thereon with an amendment in the nature of a substitute, and recommends that the bill as amended pass.

AMENDMENT

Strike out all after the enacting clause and insert the following:

That this Act may be cited as the "Comprehensive Forfeiture Act of 1983".

TITLE I

SEC. 101. Section 1963 of title 18 of the United States Code is amended to read as follows:

"§ 1963. Criminal penalties

"(a) Whoever violates any provision of section 1962 of this chapter shall be fined not more than $25,000 or imprisoned not more than twenty years, or both, and shall forfeit to the United States, irrespective of any provision of State law—

"(1) any interest the person has acquired or maintained in violation of section 1962;

"(2) any—

"(A) interest in;

"(B) security of;

"(C) claim against; or

"(D) property or contractual right of any kind affording a source of influence over;

any enterprise which the person has established, operated, controlled, conducted, or participated in the conduct of, in violation of section 1962; and

"(3) any property constituting, or derived from, any proceeds which the person obtained, directly or indirectly, from racketeering activity or unlawful debt collection in violation of section 1962.

The court, in imposing sentence on such person shall order, in addition to any other sentence imposed pursuant to this section, that the person forfeit to the United States all property described in this subsection.

"(b) Property subject to criminal forfeiture under this section includes—

"(1) real property, including things growing on, affixed to, and found in land; and

"(2) tangible and intangible personal property, including rights, privileges, interests, claims, and securities.

"(c) All right, title, and interest in property described in subsection (a) vests in the United States upon the commission of the act giving rise to forfeiture under this section. Any such property that is subsequently transferred to a person other than the defendant may be the subject of a special verdict of forfeiture and thereafter shall be ordered forfeited to the United States, unless the transferee establishes in a hearing pursuant to subsection (m) that he is a bona fide purchaser for value of such property who at the time of purchase was reasonably without cause to believe that the property was subject to forfeiture under this section.

"(d) If any of the property described in subsection (a)—

"(1) cannot be located;

"(2) has been transferred to, sold to, or deposited with, a third party;

"(3) has been placed beyond the jurisdiction of the court;

"(4) has been substantially diminished in value by any act or omission of the defendant; or

"(5) has been commingled with other property which cannot be divided without difficulty;

the court shall order the forfeiture of any other property of the defendant up to the value of any property described in paragraphs (1) through (5).

"(e)(1) Upon application of the United States, the court may enter a restraining order or injunction, require the execution of a satisfactory performance bond, or take any other action to preserve the availability of property described in subsection (a) for forfeiture under this section—

"(A) upon the filing of an indictment or information charging a violation of section 1962 of this chapter and alleging that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section; or

"(B) prior to the filing of such an indictment or information, if, after notice to persons appearing to have an interest in the property and opportunity for a hearing, the court determines that—

"(i) there is a substantial probability that the United States will prevail on the issue of forfeiture and that failure to enter the order will result in the property being destroyed, removed from the jurisdiction of the court, or otherwise made unavailable for forfeiture; and

"(ii) the need to preserve the availability of the property through the entry of the requested order outweighs the hardship on any party against whom the order is to be entered:

Provided, however, That an order entered pursuant to subparagraph (B) shall be effective for not more than ninety days, unless extended by the court for good cause shown or unless an indictment or information described in subparagraph (A) has been filed.

"(2) A temporary restraining order under this subsection may be entered upon application of the United States without notice or opportunity for a hearing when an information or indictment has not yet been filed with respect to the property, if the United States demonstrates that there is probable cause to believe that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section and that provision of notice will jeopardize the availability of the property for forfeiture. Such a temporary order shall expire not more than ten days after the date on which it is entered, unless extended for good cause shown or unless the party against whom it is entered consents to an extension for a longer period. A hearing requested concerning an order entered under this paragraph shall be held at the earliest possible time, and prior to the expiration of the temporary order.

"(3) The court may receive and consider, at a hearing held pursuant to this subsection, evidence and information that would be inadmissible under the Federal Rules of Evidence.

"(f) Upon conviction of a person under this section, the court shall enter a judgment of forfeiture of the property to the United States and shall also authorize the Attorney General to seize all property ordered forfeited upon such terms and conditions as the court shall deem proper. Following the entry of an order declaring the property forfeited, the court may, upon application of the United States, enter such appropriate restraining orders or injunctions, require the execution of satisfactory performance bonds, appoint receivers, conservators, appraisers, accountants, or trustees, or take any other action to protect the interest of the United States in the property ordered forfeited. Any income accruing to, or derived from, an enterprise or an interest in an enterprise which has been ordered forfeited under this section may be used to offset ordinary and necessary expenses to the enterprise which are required by law, or which are necessary to protect the interests of the United States or third parties.

"(g) Following the seizure of property ordered forfeited under this section, the Attorney General shall direct the disposition of the property by sale or any other commercially feasible means, making due provision for the rights of any innocent persons. Any property right or interest not exercisable by, or transferable for value to, the United States shall expire and shall not revert to the defendant, nor shall the defendant or any person acting in concert with or on behalf of the defendant be eligible to purchase forfeited property at any sale held by the United States. Upon application of a person, other than the defendant or a person acting in concert with or on behalf of the defendant, the court may restrain or stay the sale or disposition of the property pending the conclusion of any appeal of the criminal case giving rise to the forfeiture, if the applicant demonstrates that proceeding with the sale or disposition of the property will result in irreparable injury, harm or loss to him. Notwithstanding 31 U.S.C. 3302(b), the proceeds of any sale or other disposition of property forfeited under this section and any moneys forfeited shall be used to pay all proper expenses for the forfeiture and the sale, including expenses of seizure, maintenance and custody of the property pending its disposition, advertising and court costs. The Attorney General shall deposit in the Treasury any amounts of such proceeds or moneys remaining after the payment of such expenses.

"(h) With respect to property ordered forfeited under this section, the Attorney General is authorized to—

"(1) grant petitions for mitigation or remission of forfeiture, restore forfeited property to victims of a violation of this chapter, or take any other action to protect the rights of innocent persons which is in the interest of justice and which is not inconsistent with the provisions of this chapter;

"(2) compromise claims arising under this section;

"(3) award compensation to persons providing information resulting in a forfeiture under this section;

"(4) direct the disposition by the United States of all property ordered forfeited under this section by public sale or any other commercially feasible means, making due provision for the rights of innocent persons; and

"(5) take appropriate measures necessary to safeguard and maintain property ordered forfeited under this section pending its disposition.

"(i) The Attorney General may promulgate regulations with respect to—

"(1) making reasonable efforts to provide notice to persons who may have an interest in property ordered forfeited under this section;

"(2) granting petitions for remission or mitigation of forfeiture;

"(3) the restitution of property to victims of an offense petitioning for remission or mitigation of forfeiture under this chapter;

"(4) the disposition by the United States of forfeited property by public sale or other commercially feasible means;

"(5) the maintenance and safekeeping of any property forfeited under this section pending its disposition; and

"(6) the compromise of claims arising under this chapter.

Pending the promulgation of such regulations, all provisions of law relating to the disposition of property, or the proceeds from the sale thereof, or the remission or mitigation of forfeitures for violation of the customs laws, and the compromise of claims and the award of compensation to informers in respect of such forfeitures shall apply to forfeitures incurred, or alleged to have been incurred, under the provisions of this section, insofar as applicable and not inconsistent with the provisions hereof. Such duties as are imposed upon the Customs Service or any person with respect to the disposition of property under the customs law shall be performed under this chapter by the Attorney General.

"(j) Except as provided in subsection (m), no party claiming an interest in property subject to forfeiture under this section may—

"(1) intervene in a trial or appeal of a criminal case involving the forfeiture of such property under this section; or

"(2) commence an action at law or equity against the United States concerning the validity of his alleged interest in the property subsequent to the filing of an indictment or information alleging that the property is subject to forfeiture under this section.

"(k) The district courts of the United States shall have jurisdiction to enter orders as provided in this section without regard to the location of any property which may be subject to forfeiture under this section or which has been ordered forfeited under this section.

"(l) In order to facilitate the identification or location of property declared forfeited and to facilitate the disposition of petitions for remission or mitigation of forfeiture, after the entry of an order declaring property forfeited to the United States the court may, upon application of the United States, order that the testimony of any witness relating to the property forfeited be taken by deposition and that any designated book, paper, document, record, recording, or other material not privileged be produced at the same time and place, in the same manner as provided for the taking of depositions under Rule 15 of the Federal Rules of Criminal Procedure.

"(m)(1) Following the entry of an order of forfeiture under this section, the United States shall publish notice of the order and of its intent to dispose of the property for at least seven successive court days in such manner as the Attorney General may direct. The Government may also, to the extent practicable, provide direct written notice to any person known to have alleged an interest in the property that is the subject of the order of forfeiture as a substitute for published notice as to those persons so notified.

"(2) Any person, other than the defendant, asserting a legal interest in property which has been ordered forfeited to the United States pursuant to this section may, within thirty days of the final publication of notice or his receipt of notice under paragraph (1), whichever is earlier, petition the court for a hearing to adjudicate the validity of his alleged interest in the property. The hearing shall be held before the court alone, without a jury.

"(3) The petition shall be signed by the petitioner under penalty of perjury and shall set forth the nature and extent of the petitioner's right, title, or interest in the property, the time and circumstances of the petitioner's acquisition of the right, title, or interest in the property, any additional facts supporting the petitioner's claim, and the relief sought.

"(4) The hearing on the petition shall, to the extent practicable and consistent with the interests of justice, be held within thirty days of the filing of the petition. The court may consolidate the hearing on the petition with a hearing on any other petition filed by a person other than the defendant under this subsection.

"(5) At the hearing, the petitioner may testify and present evidence and witnesses on his own behalf, and cross-examine witnesses who appear at the hearing. The United States may present evidence and witnesses in rebuttal and in defense of its claim to the property and cross-examine witnesses who appear at the hearing. In addition to testimony and evidence presented at the hearing, the court shall consider the relevant portions of the record of the criminal case which resulted in the order of forfeiture.

"(6) If, after the hearing, the court determines that the petitioner has established by a preponderance of the evidence that—

"(A) the petitioner has a legal right, title, or interest in the property, and such right, title, or interest renders the order of forfeiture invalid in whole or in part because the right, title, or interest was vested in the petitioner rather than the defendant or was superior to any right, title, or interest of the defendant at the time of the commission of the acts which gave rise to the forfeiture of the property under this section; or

"(B) the petitioner is a bona fide purchaser for value of the right, title, or interest in the property and was at the time of purchase reasonably without cause to believe that the property was subject to forfeiture under this section;

the court shall amend the order of forfeiture in accordance with its determination.

"(7) Following the court's disposition of all petitions filed under this subsection, or if no such petitions are filed following the expiration of the period provided in paragraph (2) for the filing of such petitions, the United States shall have clear title to property that is the subject of the order of forfeiture and may warrant good title to any subsequent purchaser or transferee.".

TITLE II

SEC. 201. Part D of title II of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 841 et seq.) is amended by adding at the end thereof the following new section 413:

"CRIMINAL FORFEITURES

"PROPERTY SUBJECT TO CRIMINAL FORFEITURE

"SEC. 413. (a) Any person convicted of a violation of this title or title III punishable by imprisonment for more than one year shall forfeit to the United States, irrespective of any provision of State law—

"(1) any property constituting, or derived from, any proceeds the person obtained, directly or indirectly, as the result of such violation;

"(2) any of the person's property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, such violation; and

"(3) in the case of a person convicted of engaging in a continuing criminal enterprise in violation of section 408 of this title (21 U.S.C. 848), the person shall forfeit, in addition to any property described in paragraph (1) or (2), any of his interest in, claims against, and property or contractual rights affording a source of control over, the continuing criminal enterprise.

The court, in imposing sentence on such person, shall order, in addition to any other sentence imposed pursuant to this title or title III, that the person forfeit to the United States all property described in this subsection.

"MEANING OF TERM 'PROPERTY'

"(b) Property subject to criminal forfeiture under this section includes—

"(1) real property, including things growing on, affixed to, and found in land; and

"(2) tangible and intangible personal property, including rights, privileges, interests, claims, and securities.

"THIRD PARTY TRANSFERS

"(c) All right, title, and interest in property described in subsection (a) vests in the United States upon the commission of the act giving rise to forfeiture under this section. Any such property that is subsequently transferred to a person other than the defendant may be the subject of a special verdict of forfeiture and thereafter shall be ordered forfeited to the United States, unless the transferee establishes in a hearing pursuant to subsection (o) that he is a bona fide purchaser for value of such property who at the time of purchase was reasonably without cause to believe that the property was subject to forefeiture under this section.

"(d) If any of the property described in subsection (a)—

"(1) cannot be located;

"(2) has been transferred to, sold to, or deposited with a third party;

"(3) has been placed beyond the jurisdiction of the court;

"(4) has been substantially diminished in value by any act or omission of the defendant; or

"(5) has been commingled with other property which cannot be divided without difficulty;

the court shall order the forfeiture of any other property of the defendant up to the value of any property described in paragraphs (1) through (5).

"REBUTTABLE PRESUMPTION

"(e) There is a rebuttable presumption at trial that any property of a person convicted of a felony under this title or title III is subject to forfeiture under this section if the United States establishes by a preponderance of the evidence that—

"(1) such property was acquired by such person during the period of the violation of this title or title III or within a reasonable time after such period; and

"(2) there was no likely source for such property other than the violation of this title or title III.

"PROTECTIVE ORDERS

"(f)(1) Upon application of the United States, the court may enter a restraining order or injunction, require the execution of a satisfactory performance bond, or

take any other action to preserve the availability of property described in subsection (a) for forfeiture under this section—

"(A) upon the filing of an indictment or information charging a violation of this title or title III for which criminal forfeiture may be ordered under this section and alleging that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section; or

"(B) prior to the filing of such an indictment or information, if, after notice to persons appearing to have an interest in the property and opportunity for a hearing, the court determines that—

"(i) there is a substantial probability that the United States will prevail on the issue of forfeiture and that failure to enter the order will result in the property being destroyed, removed from the jurisdiction of the court, or otherwise made unavailable for forfeiture; and

"(ii) the need to preserve the availability of the property through the entry of the requested order outweighs the hardship on any party against whom the order is to be entered:

Provided, however, That an order entered pursuant to subparagraph (B) shall be effective for not more than ninety days, unless extended by the court for good cause shown or unless an indictment or information described in subparagraph (A) has been filed.

"(2) A temporary restraining order under this subsection may be entered upon application of the United States without notice or opportunity for a hearing when an information or indictment has not yet been filed with respect to the property, if the United States demonstrates that there is probable cause to believe that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section and that provision of notice will jeopardize the availability of the property for forfeiture. Such a temporary order shall expire not more than ten days after the date on which it is entered, unless extended for good cause shown or unless the party against whom it is entered consents to an extension for a longer period. A hearing requested concerning an order entered under this paragraph shall be held at the earliest possible time and prior to the expiration of the temporary order.

"(3) The court may receive and consider, at a hearing held pursuant to this subsection, evidence and information that would be inadmissible under the Federal Rules of Evidence.

"WARRANT OF SEIZURE

(g) The Government may request the issuance of a warrant authorizing the seizure of property subject to forfeiture under this section in the same manner as provided for a search warrant. If the court determines that there is probable cause to believe that the property to be seized would, in the event of conviction, be subject to forfeiture and that an order under subsection (f) may not be sufficient to assure the availability of the property for forfeiture, the court shall issue a warrant authorizing the seizure of such property.

"EXECUTION

"(h) Upon entry of an order of forfeiture under this section, the court shall authorize the Attorney General to seize all property ordered forfeited upon such terms and conditions as the court shall deem proper. Following entry of an order declaring the property forfeited, the court may, upon application of the United States, enter such appropriate restraining orders or injunctions, require the execution of satisfactory performance bonds, appoint receivers, conservators, appraisers, accountants, or trustees, or take any other action to protect the interest of the United States in the property ordered forfeited. Any income accruing to or derived from property ordered forfeited under this section may be used to offset ordinary and necessary expenses to the property which are required by law, or which are necessary to protect the interests of the United States or third parties.

"DISPOSITION OF PROPERTY

"(i) Following the seizure of property ordered forfeited under this section, the Attorney General shall direct the disposition of the property by sale or any other commercially feasible means, making due provision for the rights of any innocent persons. Any property right or interest not exercisable by, or transferable for value to, the United States shall expire and shall not revert to the defendant, nor shall the defendant or any person acting in concert with him or on his behalf be eligible to

purchase forfeited property at any sale held by the United States. Upon application of a person, other than the defendant or a person acting in concert with him or on his behalf, the court may restrain or stay the sale or disposition of the property pending the conclusion of any appeal of the criminal case giving rise to the forfeiture, if the applicant demonstrates that proceeding with the sale or disposition of the property will result in irreparable injury, harm, or loss to him.

"AUTHORITY OF THE ATTORNEY GENERAL

"(j) With respect to property ordered forfeited under this section, the Attorney General is authorized to—

"(1) grant petitions for mitigation or remission of forfeiture, restore forfeited property to victims of a violation of this chapter, or take any other action to protect the rights of innocent persons which is in the interest of justice and which is not inconsistent with the provisions of this section;

"(2) compromise claims arising under this section;

"(3) award compensation to persons providing information resulting in a forfeiture under this section;

"(4) direct the disposition by the United States, in accordance with the provisions of section 511(e) of this title (21 U.S.C. 881(e)), of all property ordered forfeited under this section by public sale or any other commercially feasible means, making due provision for the rights of innocent persons; and

"(5) take appropriate measures necessary to safeguard and maintain property ordered forfeited under this section pending its disposition.

"APPLICABILITY OF CIVIL FORFEITURE PROVISIONS

"(k) Except to the extent that they are inconsistent with the provisions of this section, the provisions of section 511(d) of this title (21 U.S.C. 881(d)) shall apply to a criminal forfeiture under this section.

"BAR ON INTERVENTION

"(l) Except as provided in subsection (o), no party claiming an interest in property subject to forfeiture under this section may—

"(1) intervene in a trial or appeal of a criminal case involving the forfeiture of such property under this section; or

"(2) commence an action at law or equity against the United States concerning the validity of his alleged interest in the property subsequent to the filing of an indictment or information alleging that the property is subject to forfeiture under this section.

"JURISDICTION TO ENTER ORDERS

"(m) The district courts of the United States shall have jurisdiction to enter orders as provided in this section without regard to the location of any property which may be subject to forfeiture under this section or which has been ordered forfeited under this section.

"DEPOSITIONS

"(n) In order to facilitate the identification and location of property declared forfeited and to facilitate the disposition of petitions for remission or mitigation of forfeiture, after the entry of an order declaring property forfeited to the United States, the court may, upon application of the United States, order that the testimony of any witness relating to the property forfeited be taken by deposition and that any designated book, paper, document, record, recording, or other material not privileged be produced at the same time and place, in the same manner as provided for the taking of depositions under Rule 15 of the Federal Rules of Criminal Procedure.

"THIRD PARTY INTERESTS

"(o)(1) Following the entry of an order of forfeiture under this section, the United States shall publish notice of the order and of its intent to dispose of the property for at least seven successive court days in such manner as the Attorney General may direct. The Government may also, to the extent practicable, provide direct written notice to any person known to have alleged an interest in the property that is the subject of the order of forfeiture as a substitute for published notice as to those persons so notified.

"(2) Any person, other than the defendant, asserting a legal interest in property which has been ordered forfeited to the United States pursuant to this section may, within thirty days of the final publication of notice or his receipt of notice under paragraph (1), whichever is earlier, petition the court for a hearing to adjudicate the validity of his alleged interest in the property. The hearing shall be held before the court alone, without a jury.

"(3) The petition shall be signed by the petitioner under penalty of perjury and shall set forth the nature and extent of the petitioner's right, title, or interest in the property, the time and circumstances of the petitioner's acquisition of the right, title, or interest in the property, any additional facts supporting the petitioner's claim, and the relief sought.

"(4) The hearing on the petition shall, to the extent practicable and consistent with the interests of justice, be held within thirty days of the filing of the petition. The court may consolidate the hearing on the petition with a hearing on any other petition filed by a person other than the defendant under this subsection.

"(5) At the hearing, the petitioner may testify and present evidence and witnesses on his own behalf, and cross-examine witnesses who appear at the hearing. The United States may present evidence and witnesses in rebuttal and in defense of its claim to the property and cross-examine witnesses who appear at the hearing. In addition to testimony and evidence presented at the hearing, the court shall consider the relevant portions of the record of the criminal case which resulted in the order of forfeiture.

"(6) If, after the hearing, the court determines that the petitioner has established by a preponderance of the evidence that—

"(A) the petitioner has a legal right, title, or interest in the property, and such right, title, or interest renders the order of forfeiture invalid in whole or in part because the right, title, or interest was vested in the petitioner rather than the defendant or was superior to any right, title, or interest of the defendant at the time of the commission of the acts which gave rise to the forfeiture of the property under this section; or

"(B) the petitioner is a bona fide purchaser for value of the right, title, or interest in the property and was at the time of purchase reasonably without cause to believe that the property was subject to forfeiture under this section;

the court shall amend the order of forfeiture in accordance with its determination.

"(7) Following the court's disposition of all petitions filed under this subsection, or if no such petitions are filed following the expiration of the period provided in paragraph (2) for the filing of such petitions, the United States shall have clear title to property that is the subject of the order of forfeiture and may warrant good title to any subsequent purchaser or transferee.".

SEC. 202. Section 304 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 824) is amended by adding at the end of subsection (f) the following sentence: "All right, title, and interest in such controlled substances shall vest in the United States upon a revocation order becoming final.".

SEC. 203. Section 408 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 848) is amended—

(a) in subsection (a)—

(1) by striking out "(1)";

(2) by striking out "paragraph (2)" each time it appears, and inserting in lieu thereof "section 413 of this title"; and

(3) by striking out paragraph (2); and

(b) by striking out subsection (d).

SEC. 204. Section 511 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 881) is amended—

(a) in subsection (a) by inserting at the end thereof the following new subsection:

"(7) All real property, including any right, title, and interest in the whole of any lot or tract of land and any appurtenances or improvements, which is used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, a violation of this title punishable by more than one year's imprisonment, except that no property shall be forfeited under this paragraph, to the extent of an interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner.";

(b) in subsection (b)—

(1) by inserting "civil or criminal" after "Any property subject to"; and

(2) by striking out in paragraph (4) "has been used or is intended to be used in violation of" and inserting in lieu thereof "is subject to civil or criminal forfeiture under";

(c) in subsection (c)—

(1) by inserting in the second sentence "any of" after "Whenever property is seized under"; and

(2) by inserting in paragraph (3) ", if practicable," after "remove it";

(d) in subsection (d), by inserting "any of" after "alleged to have been incurred, under";

(e) in subsection (e)—

(1) by inserting "civilly or criminally" in the first sentence after "Whenever property is"; and

(2) by striking out in paragraph (3) "remove it for disposition" and inserting in lieu thereof "and dispose of it"; and

(f) by inserting at the end thereof the following new subsections:

"(h) All right, title, and interest in property described in subsection (a) shall vest in the United States upon commission of the act giving rise to forfeiture under this section.

"(i) The filing of an indictment or information alleging a violation of this title or title III which is also related to a civil forfeiture proceeding under this section shall, upon motion of the United States and for good cause shown, stay the civil forfeiture proceeding.".

SEC. 205. Part A of title III of the Comprehensive Drug Abuse Prevention and Control Act of 1970 is amended by adding at the end thereof the following new section:

"CRIMINAL FORFEITURES

"SEC. 1017. Section 413 of title II, relating to criminal forfeitures, shall apply in every respect to a violation of this title punishable by imprisonment for more than one year.".

SEC. 206. The table of contents of the Comprehensive Drug Abuse Prevention and Control Act of 1970 is amended—

(a) by adding immediately after

"Sec. 412. Applicability of treaties and other international agreements."

the following new item:

"Sec. 413. Criminal forfeitures.";

and

(b) by adding immediately after

"Sec. 1016. Authority of Secretary of the Treasury."

the following new item:

"Sec. 1017. Criminal forfeitures.".

TITLE III

SEC. 301. (a) Section 511(e)(1) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 881(e)(1)) is amended by adding after "retain the property for official use" the following: "or transfer the custody or ownership of any forfeited property to any Federal, State, or local agency pursuant to section 616 of the Tariff Act of 1930 (19 U.S.C. 1616)".

(b) Section 511(e) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 881(e)) is further amended by striking out "the general fund of the United States Treasury" in the sentence beginning "The Attorney General shall" and inserting in lieu thereof "accordance with subsection (j) of this section".

SEC. 302. (a) Section 511 of the Controlled Substances Act (21 U.S.C. 881) is amended by adding at the end the following new subsection:

"(j)(1) There is established in the United States Treasury a special fund to be known as the Drug Assets Forfeiture Fund (hereinafter in this subsection referred to as the 'fund') which shall be available to the Attorney General without fiscal year limitation in such amounts as may be specified in appropriation Acts for the following purposes of the Department of Justice:

"(A) the payment, at the discretion of the Attorney General, of any expenses necessary to seize, detain, inventory, safeguard, maintain, advertise, or sell property under seizure, detention, or forfeited pursuant to this Act or the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or of any other necessary expenses incident to the seizure, detention, or forfeiture of such property; such payments may include payments for contract services and payments to reimburse any Federal, State, or local agency for any expenditures made to perform the foregoing functions;

"(B) the payment of awards for information or assistance leading to a civil or criminal forfeiture under this Act, or the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), at the discretion of the Attorney General;

"(C) the compromise and payment of valid liens and mortgages against property that has been forfeited pursuant to any provision of this Act or the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), subject to the discretion of the Attorney General to determine the validity of any such lien or mortgage and the amount of payment to be made; and

"(D) disbursements authorized in connection with remission and mitigation procedures relating to property forfeited under this Act or the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.).

"(2) Any reward paid from the fund for information concerning a forfeiture shall be paid at the discretion of the Attorney General or his delegate, except that the authority to pay a reward of $10,000 or more shall not be delegated to any person other than the Deputy Attorney General, the Associate Attorney General, the Director of the Federal Bureau of Investigation, or the Administrator of the Drug Enforcement Administration. Any reward for such information shall not exceed the lesser of $150,000 or one quarter of the amount realized by the United States from the property forfeited.

"(3) There shall be deposited in the fund all amounts remaining after payment of expenses for forfeiture and sale under subsection (e) of this section.

"(4) Amounts in the fund which are not currently needed for the purpose of this section shall be kept on deposit or invested in obligations of, or guaranteed by, the United States.

"(5) The Attorney General shall transmit to the Congress, not later than four months after the end of each fiscal year a detailed report on the amounts deposited in the fund and a description of expenditures made under this subsection.

"(6) The provisions of this subsection relating to deposits in the fund shall apply to all property in the custody of the Department of Justice on or after the effective date of the Comprehensive Forfeiture Act of 1983.

"(7) For the purposes described in paragraph (1) (A), (B), and (C), there are authorized to be appropriated from the fund for fiscal year 1984 not more than $10,000,000, for fiscal year 1985 not more than $15,000,000, for fiscal year 1986 not more than $20,000,000, and for fiscal year 1987 not more than $20,000,000. For fiscal years 1984, 1985, 1986, and 1987, there are authorized to be appropriated such amounts as may be necessary for the purpose described in paragraph (1)(D). Amounts in the fund in excess of the amounts appropriated at the end of each fiscal year shall be deposited in the General Fund of the United States Treasury. At the end of the last fiscal year for which appropriations from the fund are authorized by this Act, the fund shall cease to exist and any amount then remaining in the fund shall be deposited in the General Fund of the Treasury of the United States.".

TITLE IV

SEC. 401. Section 607 of the Tariff Act of 1930 (19 U.S.C. 1607) is amended to read as follows:

"§ 607. Seizure; value $100,000 or less, prohibited articles, transporting conveyances

"(a) If—

"(1) the value of such seized vessel, vehicle, aircraft, merchandise, or baggage does not exceed $100,000;

"(2) such seized merchandise consists of articles the importation of which is prohibited; or

"(3) such seized vessel, vehicle, or aircraft was used to import, export, or otherwise transport or store any controlled substances;

the appropriate customs officer shall cause a notice of the seizure of such articles and the intention to forfeit and sell or otherwise dispose of the same according to law to be published for at least three successive weeks in such manner as the Secretary of the Treasury may direct. Written notice of seizure together with information on the applicable procedures shall be sent to each party who appears to have an interest in the seized article.

"(b) As used in this section, the term 'controlled substance' has the meaning given that term in section 102 of the Controlled Substances Act (21 U.S.C. 802).".

SEC. 402. Section 608 of the Tariff Act of 1930 (19 U.S.C. 1608) is amended in the second sentence by inserting after "penal sum of" the following: "$5,000 or 10 per centum of the value of the claimed property, whichever is lower, but not less than,".

SEC. 403. Section 609 of the Tariff Act of 1930 (19 U.S.C. 1609) is amended by striking out "after deducting the actual expenses of seizure, publication, and sale in the Treasury of the United States." and inserting in lieu thereof "after deducting expenses enumerated in section 613 of this Act into the Customs Forfeiture Fund.".

SEC. 404. Section 610 of the Tariff Act of 1930 (19 U.S.C. 1610) is amended by striking out "If the value of any vessel, vehicle, merchandise, or baggage so seized is greater than $10,000," and substituting in lieu thereof the following: "If any vessel, vehicle, aircraft, merchandise, or baggage is not subject to the procedure set forth in section 607,".

SEC. 405. Section 612 of the Tariff Act of 1930 (19 U.S.C. 1612) is amended by—

(1) inserting "aircraft," immediately after "vehicle," wherever it appears in the section;

(2) striking out "and the value of such vessel, vehicle, merchandise, or baggage as determined under section 606 does not exceed $10,000," in the first sentence and inserting in lieu thereof the following: "and the article is subject to the provisions of section 607 of this Act,"; and

(3) striking out "If such value of such vessel, vehicle, merchandise, or baggage exceeds $10,000," in the second sentence and inserting in lieu thereof the following: "If the article is not subject to the provisions of section 607 of this Act,".

SEC. 406. Section 613(a)(3) of the Tariff Act of 1930 (19 U.S.C. 1613(a)(3)) is amended to read as follows:

"(3) The residue shall be deposited in the Customs Forfeiture Fund.".

SEC. 407. The Tariff Act of 1930 is amended by adding a new section immediately after section 613 (19 U.S.C. 1613) to read as follows:

"§ 613a. Customs Forfeiture Fund

"(a) There is hereby established in the Treasury of the United States a special fund for the United States Customs Service that shall be entitled the 'Customs Forfeiture Fund' (hereinafter referred to in this section as the 'fund'). This fund shall be available without fiscal year limitation in such amounts as may be specified in appropriations Acts for the following purposes of the United States Customs Service—

"(1) the payment of all proper expenses of the seizure or detention or the proceedings of forfeiture and sale (not otherwise recovered under section 613(a)) including but not limited to, expenses of inventory, security, maintaining the custody of the property, advertising and sale, and if condemned by the court and a bond for such costs was not given, the costs as taxed by the court; and

"(2) the payment of awards of compensation to informers under section 619 of the Tariff Act of 1930, as amended.

"(b) There shall be deposited in the fund all proceeds from the sale or other disposition of property forfeited under, and any currency or monetary instruments seized and forfeited under, the laws enforced or administered by the United States Customs Service.

"(c) Amounts in the fund which are not currently needed for the purposes of this section shall be kept on deposit or invested in obligations of, or guaranteed by, the United States.

"(d) The Commissioner of the Customs shall transmit to the Congress, not later than four months after the end of each fiscal year a detailed report on the amounts deposited in the fund and a description of expenditures made under this section.

"(e) The provisions of this section relating to deposits in the fund shall apply to all property in the custody of the United States Customs Service on or after the effective date of the Comprehensive Forfeiture Act of 1983.

"(f) For the purposes described in subsection (a), there are authorized to be appropriated from the fund for fiscal year 1984 not more than $10,000,000, for fiscal year 1985 not more than $15,000,000, for fiscal year 1986 not more than $20,000,000, and for fiscal year 1987 not more than $20,000,000. Amounts in the fund in excess of the amounts appropriated at the end of each fiscal year shall be deposited in the General Fund of the Treasury of the United States. At the end of the last fiscal year for which appropriations from the fund are authorized by this Act, the fund shall cease to exist and any amount then remaining in the fund shall be deposited in the General Fund of the Treasury of the United States.".

SEC. 408. A new section 616 is added to the Tariff Act of 1930 (19 U.S.C. 1616) to read as follows:

"§ 616. Disposition of forfeited property

"(a) Notwithstanding any other provision of the law, the Commissioner is authorized to retain forfeited property, or to transfer such property on such terms and conditions as he may determine to—

"(1) any other Federal agency; or

"(2) any State or local law enforcement agency which participated directly in any of the acts which led to the seizure or forfeiture of the property.

The United States shall not be liable in any action arising out of the use of any property the custody of which was transferred pursuant to this section to any non-Federal agency.

"(b) The Secretary of the Treasury may order the discontinuance of any forfeiture proceedings under this Act in favor of the institution of forfeiture proceedings by State or local authorities under an appropriate State or local statute. After the filing of a complaint for forfeiture under this Act, the Attorney General may seek dismissal of the complaint in favor of forfeiture proceedings under State or local law.

"(c) Whenever forfeiture proceedings are discontinued by the United States in favor of State or local proceedings, the United States may transfer custody and possession of the seized property to the appropriate State or local official immediately upon the initiation of the proper actions by such officials.

"(d) Whenever forfeiture proceedings are discontinued by the United States in favor of State or local proceedings, notice shall be sent to all known interested parties advising them of the discontinuance or dismissal. The United States shall not be liable in any action arising out of the seizure, detention, and transfer of seized property to State or local officials.".

SEC. 409. Section 619 of the Tariff Act of 1930 (19 U.S.C. 1619) is amended by—

(a) striking out "$50,000" each time it appears and inserting in lieu thereof "$150,000"; and

(b) adding at the end thereof "In no event shall the Secretary delegate the authority to pay an award under this section in excess of $10,000 to an official below the level of the Commissioner of Customs.".

SEC. 410. The Tariff Act of 1930 is amended by adding a new section 589, to read as follows:

"§ 589. Arrest authority of customs officers

"Subject to the direction of the Secretary of the Treasury, an officer of the Customs Service as defined in section 401(i) of this Act, as amended, may—

"(1) carry a firearm;

"(2) execute and serve any order, warrant, subpena, summons, or other process issued under the authority of the United States;

"(3) make an arrest without a warrant for any offense against the United States committed in the officer's presence or for a felony, cognizable under the laws of the United States committed outside the officer's presence if the officer has reasonable grounds to believe that the person to be arrested has committed or is committing a felony; and

"(4) perform any other law enforcement duty that the Secretary of the Treasury may designate.".

(b) Section 7607 of the Internal Revenue Act of 1954 (26 U.S.C. 7607) is repealed.

SEC. 411. Sections 602, 605, 606, 608, 609, 611, 613, 614, 615, 618, and 619 (19 U.S.C. 1602, 1605, 1606, 1608, 1609, 1611, 1613, 1614, 1615, 1618, and 1619) of the Tariff Act of 1930 are amended by inserting the word "aircraft," immediately after the words "vehicle" or "vehicles," wherever they appear.

SEC. 412. Section 644 of the Tariff Act of 1930 (19 U.S.C. 1644) is amended to read as follows:

"§ 644. Application of the Federal Aviation Act and section 1518(d) of title 33

"(a) The authority vested by section 1109 of the Federal Aviation Act of 1958 (49 U.S.C. 1509) in the Secretary of the Treasury, by regulation to provide for the application to civil air navigation of the laws and regulations relating to the administration of customs, and of the laws and regulations relating to the entry and clearance of vessels, shall extend to the application in like manner of any of the provisions of this Act, or of the Anti-Smuggling Act of 1935, or of any regulations promulgated hereunder.

"(b) For purposes of section 1518(d) of Title 33, the term 'customs laws administered by the Secretary of the Treasury' shall mean this chapter and any other provisions of law classified to this title.".

SEC. 413. The Tariff Act of 1930 is amended by adding a new section 600 to read as follows:

"§ 600. Application of the customs laws to other seizures by customs officers

"The procedures set forth in sections 602 through 619 of this Act (19 U.S.C. 1602 through 1619) shall apply to seizures of any property effected by customs officers

under any law enforced or administered by the Customs Service unless such law specifies different procedures.".

DISCUSSION OF AMENDMENT

Three Senate bills containing forfeiture provisions were introduced in the 98th Congress: S. 948, the Comprehensive Forfeiture Act of 1983, introduced by Senator Biden with Senators Thurmond, Baker, Nunn, Laxalt, and Leahy as original cosponsors; S. 829, the Comprehensive Crime Control Act of 1983, introduced by Senators Thurmond and Laxalt, at the request of the President; and S. 830, the National Security and Violent Crime Control Act of 1983, the Democratic crime package, introduced by Senator Biden and 28 original cosponsors. The forfeiture provisions of all three bills were almost identical, differing primarily on technical matters of drafting.

On July 21, 1983, the Committee considered an original, bipartisan comprehensive Committee bill that contained a substantial number of relatively minor changes in the forfeiture title over the comparable provisions of S. 948, S. 829 and S. 830. This bill, the Comprehensive Crime Control Act of 1983, (S. 1762), as adopted by Committee, was introduced, referred to Committee, and reported August 4, 1983. Title III of S. 1762 contains the forfeiture provisions approved by the Committee.

On July 26, 1983, the Committee adopted an amendment in the nature of a substitute to S. 948, incorporating into this bill the identical language adopted by the Committee with respect to title III (forfeiture) of the bipartisan crime package, S. 1762. The main body of this report explains the amendment.

GENERAL STATEMENT AND SUMMARY

1. In General

S. 948 is designed to enhance the use of forfeiture, and in particular, the sanction of criminal forfeiture, as a law enforcement tool in combatting two of the most serious crime problems facing the country: racketeering and drug trafficking. Profit is the motivation for this criminal activity, and it is through economic power that it is sustained and grows. More than ten years ago, the Congress recognized in its enactment of statutes specifically addressing organized crime and illegal drugs [1] that the conviction of individual racketeers and drug dealers would be of only limited effectiveness if the economic power bases of criminal organizations or enterprises were left intact, and so included forfeiture authority designed to strip these offenders and organizations of their economic power.

Today, few in the Congress or the law enforcement community fail to recognize that the traditional criminal sanctions of fine and imprisonment are inadequate to deter or punish the enormously profitable trade in dangerous drugs which, with its inevitable attendant violence, is plaguing the country. Clearly, if law enforcement efforts to combat racketeering and drug trafficking are to be successful, they must include an attack on the economic aspects of

[1] 18 U.S.C. 1961 *et seq.* and 21 U.S.C. 848.

these crimes. Forfeiture is the mechanism through which such an attack may be made.

In April 1981 the General Accounting Office released a report, done at Senator Biden's request, entitled "Asset Forfeiture—A Seldom Used Tool in Combatting Drug Trafficking." The report concluded that since enactment in 1970 of the Racketeer Influenced and Corrupt Organizations Statute (RICO) and the Comprehensive Drug Prevention and Control Act—the first Federal statutes to contain criminal forfeiture provisions—the Federal Government's record in taking the profit out of organized crime, especially drug trafficking, was far below Congress' expectations. The GAO concluded that the major reasons for the failure of forfeiture statutes—which in 1970 were proclaimed to be the ideal weapon for breaking the backs of sophisticated narcotics operations—were (1) that Federal law enforcement agencies had not aggressively pursued forfeiture, and (2) that the current forefeiture statutes contain numerous limitations and ambiguities that have significantly impeded the full realization of forfeiture's potential as a powerful law enforcement weapon. In recent years the Justice Department and other Federal agencies have made a concerted effort to increase the use of forfeiture in narcotics and racketeering cases. This bill is intended to eliminate the statutory limitations and ambiguities that have frustrated active pursuit of forfeiture by Federal law enforcement agencies.

Improvement of forfeiture laws is of bipartisan concern. During his tenure as Chairman of the Subcommittee on Criminal Justice in the 96th Congress, Senator Biden held hearings on forfeiture of narcotics proceeds[2] and introduced strong forfeiture legislation in the 97th Congress.[3] Also in the 97th Congress, Senator Thurmond, at the request of the Administration, introduced S. 2320, a comprehensive forfeiture bill. Hearings on this bill were held on April 23, 1982.[4] S. 2320 was favorably reported by the Committee on August 10, 1982.[5] Similar provisions were also included as title VII in S. 2572, an omnibus crime bill introduced on May 26, 1982, and placed directly on the Senate Calendar. With additional amendments to the forfeiture title, S. 2572 passed the Senate on September 30, 1982, by a vote of 95 to 1.[6] The text of S. 2572, as passed, was added to a House passed bill, H.R. 3963, by voice vote.[7] A compromise forfeiture title was included in H.R. 3963 as it passed the House on December 20, 1982, by a vote of 271–27 and as adopted by the Senate on the same date by voice vote.[8] The President pocket vetoed H.R. 3963 for reasons unrelated to the forfeiture provisions.

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[2] *Forfeiture of Narcotics Proceeds*, Hearings before the Subcommittee on Criminal Justice of the Committee on the Judiciary, United States Senate, 96th Cong., 2d Sess. (1980).

[3] S. 1126, 97th Cong., 1st Sess. (1981).

[4] *DEA Oversight and Budget Authorization*, Hearings before the Subcommittee on Security and Terrorism of the Committee on the Judiciary, United States Senate, 97th Cong., 2d Sess. (1982).

[5] S. Rept. No. 97–520, 97th Cong., 2d Sess. (1982).

[6] 128 Cong. Rec. S12793–S12794, S12839–S12840, S12859 (daily ed.).

[7] *Id.* at S12859. In the meantime, a companion forfeiture bill to S. 2320 with significant differences, H.R. 7140, was reported by the House Committee on the Judiciary (H. Rept. No. 97–883, 97th Cong., 1st Sess. (1982)) and passed the House on September 28, 1982 (128 Cong. Rec. H7664–H7670 (daily ed.)).

On October 1, 1982, the Senate called up H.R. 7140, substituted the text of title VII of S. 2572 with technical amendments, and passed it by voice vote (*id.* at S13161–S13165).

[8] *Id.* at H10509, S15853.

In this Congress, forfeiture provisions similar to those that passed the Senate last Congress were introduced by Senator Thurmond on March 16, 1983, as a part of the Administration's "Comprehensive Crime Control Act of 1983" (S. 829) and by Senator Biden in the "National Security and Violent Crime Control Act of 1983" (S. 830), as well as by Senator Biden in the instant separate bill on forfeiture (S. 948). Comment on this subject was received in the hearings on S. 829 and related bills.[9]

For the most part, this bill's forfeiture amendments do not focus on significant expansion of the scope of property subject to forfeiture. (Authority to civilly forfeit real property used in drug trafficking and clarification of the forfeitability of proceeds of racketeering is provided, however.) Instead, they focus primarily on improving the procedures applicable in forfeiture cases. The more significant of these amendments includes measures to prevent pre-conviction transfers of assets in criminal forfeiture cases, allows forfeiture of substitute assets where transfer or concealment of assets does occur, allows the use of criminal forfeiture as an alternative to civil forfeiture in all drug felony cases, clarifies the authority for staying civil forfeiture proceedings where a related criminal case is underway, provides a funding mechanism to allow use of forfeiture proceeds to defray the escalating costs to the government in pursuing forfeitures, and increases the availability of efficient administrative procedures in uncontested civil forfeiture cases.

2. Present Federal Law

There are presently two types of forfeiture statutes in Federal law. The first, civil forfeiture of crime-related property through an *in rem* proceeding, has long been a part of Federal statutory law. A variety of assets used in drug violations, such as boats, cars, and manufacturing equipment, may be civilly forfeited under 21 U.S.C. 881. Since 1978, this statute has also provided for the civil forfeiture of the proceeds of illicit drug transactions. In addition, assets used in drug smuggling operations may be civilly forfeited under the customs laws.[10]

A civil forfeiture is commenced by the government's seizure of the asset.[11] If the value of the asset exceeds $10,000 a judicial forfeiture is always required. For assets of lesser value, if no party comes forward to contest the forfeiture and file the bond required for a judicial proceeding—presently $250—the property may be forfeited in an administrative proceeding. Since civil forfeiture is an *in rem* proceeding, the forfeiture case must be brought in the judicial district in which the property is located. The property is the defendant in the case, but parties with an interest in the property may contest the forfeiture.[12] The "preponderance of the evidence"

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[9] See, e.g., Crime Control Act Hearings (statement of the Department of Justice, pp. 46–53; statement of National Association of Attorneys General, pp. 5–6; statement of the National District Attorneys Association, pp. 25–26).

[10] 19 U.S.C. 1595a.

[11] The procedures for forfeitures under the Tariff Act of 1930 (19 U.S.C. 1202 *et seq.*) apply to civil forfeitures of drug-related assets. See 21 U.S.C. 881(d).

[12] Generally, the guilt or innocence of the owner of the asset is irrelevant. However, some more recently enacted forfeiture statutes specifically provide that property of an innocent owner may not be forfeited. See, e.g., 21 U.S.C. 881(a)(6).

standard of proof applies in civil forfeitures as in other civil actions. A party who does not have legal basis for defeating the forfeiture, but who has an equitable basis for relief, may petition the Attorney General for remission or mitigation of the forfeiture.

The other type of forfeiture, criminal forfeiture, is relatively new to Federal law, although it has its origins in ancient English common law. It is an *in personam* proceeding against a defendant in a criminal case and is imposed as a sanction against the defendant upon his conviction. Congress first acted to provide for criminal forfeiture when it passed the Racketeer Influenced and Corrupt Organizations statute [13] and the Continuing Criminal Enterprise (CCE) statute.[14] These statutes address, respectively, the conduct, acquisition, and control of enterprises through patterns of racketeering activity, and the operation of groups involved in patterns of serious drug offenses.

Criminal forfeiture must be alleged in the information or indictment. If the defendant is found guilty of the underlying offense, then a special verdict must be returned with respect to the forfeiture allegations and a judgment of forfeiture is entered against the defendant.[15] Only then is the government authorized to seize the property. Prior to conviction the court may enter a restraining order or require a performance bond to guard against improper disposition of forfeitable assets. This authority arises, however, only after the filing of an indictment or information. No mechanism exists in current law to protect against improper transfers or concealment of assets at an earlier stage. Moreover, no standard for issuance of restraining orders is articulated in current statutes. Should a defendant succeed in transferring or concealing his forfeitable assets prior to conviction, there is no procedure to allow forfeiture of other assets of the defendant to satisfy the forfeiture judgment.

Once an asset is civilly or criminally forfeited, the government normally must sell it.[16] The proceeds of the sale must be used to offset the government's expenses. Should these expenses exceed the amount realized in the sale, the loss must be borne by the agency's budget. If the sale proves profitable from the government's standpoint, the amounts realized must be deposited in the general fund of the Treasury. Proceeds from profitable sales may not be used to offset losses in unprofitable sales. Losses in forfeitures are often the result of delays that occur before judicial proceedings may be held to resolve civil forfeitures. During these periods of delay, expenses to the government mount and the value of the property depreciates.

It was hoped that through the use of current criminal and civil forfeiture provisions, forfeiture would become a powerful weapon in the fight against drug trafficking and racketeering. But the record of obtaining significant forfeitures in narcotics and organized crimes cases, particularly in contrast with the burgeoning illicit drug trade, is viewed with some disappointment.[17] To be sure,

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[13] 18 U.S.C. 1961 et seq. (hereinafter cited as RICO).
[14] 21 U.S.C. 848.
[15] Rules 31(e) and 32(b)(2) of the Federal Rules of Criminal Procedure.
[16] Forfeited property may also be retained for official use. See, e.g., 21 U.S.C. 881(e)(1).
[17] See, e.g., Forfeiture of Narcotics Proceeds Hearing, *supra* note 2.

Federal law enforcement agencies have, in recent years, placed an increased emphasis on forfeitures and progress has been made. For example, seizures of assets in drug cases now run into the millions of dollars. However, in light of the fact that the profits produced by drug trafficking are estimated to be in the billions, if not the tens of billions of dollars annually, it is clear that the full law enforcement potential of forfeiture is not being realized. Serious impediments to reaching this goal are the limitations and ambiguities of current forfeiture statutes. While there are a variety of problems posed by present forfeiture statutes, the most significant arise in the areas discussed below.

First, the scope of property subject to forfeiture is, in two important respects, too limited. The RICO statute, which was designed to deprive racketeers of the economic power generated by and used to sustain organized criminal activity has been interpreted by several courts so as to prevent the criminal forfeiture of a defendant's illgotten profits, even though other of his interests used or acquired in violation of the RICO statute would be forfeitable.[18] The result of exempting racketeering proceeds from RICO's criminal forfeiture scheme has been to seriously undercut the statute's utility and significantly limit the extent of RICO forfeitures, particularly in cases involving wholly criminal enterprises where there may be little other than profits in the way of forfeitable assets.

The extent of drug-related property subject to civil forfeiture under 21 U.S.C. 881 is also too limited in one respect. Under current law, if a person uses a boat or car to transport narcotics or uses equipment to manufacture dangerous drugs, his use of the property renders it subject to civil forfeiture. But if he uses a secluded barn to store tons of marihuana or uses his house as a manufacturing laboratory for amphetamines, there is no provision to subject his real property to civil forfeiture, even though its use was indispensable to the commission of a major drug offense and the prospect of the forfeiture of the property would have been a powerful deterrent.[19]

A second serious problem in achieving the forfeiture of significant assets in racketeering and drug cases is that the criminal forfeiture provisions of the RICO and CCE statutes fail adequately to address the phenomenon of defendants defeating forfeiture by removing, transferring, or concealing their assets prior to conviction. Unlike civil forfeitures, in which the government's seizure of the asset occurs at or soon after the commencement of the forfeiture action, in criminal forfeitures, the assets generally remain in the custody of the defendant until the time of his conviction for the offense upon which the forfeiture is based. Only after conviction does the government seize the asset. Thus, a person who anticipates that some of his property may be subject to criminal forfeiture has not only an obvious incentive, but also ample opportunity, to transfer his assets or remove them from the jurisdiction of the court prior to trial and so shield them from any possibility of forfeiture.

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[18] See, *e.g.*, *United States* v. *McManigal*, 708 F.2d 276 (7th Cir. 1983) and *United States* v. *Marubeni America Corp.*, 611 F.2d 763 (9th Cir. 1980).

[19] Real property is subject to criminal forfeiture under the RICO and CCE statutes. Also, real property which constitutes or is traceable to the proceeds of an illegal drug transaction is civilly forfeitable under 21 U.S.C. 881(a)(6).

Currently, the only mechanism available to the government to prevent such actions is the authority to obtain a restraining order and this statutory authority is limited to the post-indictment period. Thus, even if the government is aware that a person is disposing of his property in anticipation of the filing of criminal charges against him, it has no specific authority under the RICO or CCE statutes to obtain an appropriate protective order. Furthermore, even if the government is able to obtain a restraining order, should the defendant choose to defy it, he can effectively prevent the forfeiture of his property and face only the possibility of contempt sanctions for his defiance of the court's order. The important economic impact of imposing the sanction of forfeiture against the defendant is thus lost.

Although current law does authorize the issuance of restraining orders in the post-indictment period, neither the RICO nor CCE statute articulates any standard for the issuance of these orders. Certain recent court decisions have required the government to meet essentially the same stringent standard that applies to the issuance of temporary restraining orders in the context of civil litigation and have also held the Federal Rules of Evidence to apply to hearings concerning restraining orders in criminal forfeiture cases.[20] In effect, such decisions allow the courts to entertain challenges to the validity of the indictment, and require the government to prove the merits of the underlying criminal case and forfeiture counts and put on its witnesses well in advance of trial in order to obtain an order restraining the defendant's transfer of property alleged to be forfeitable in the indictment. Meeting such requirements can make obtaining a restraining order—the sole means available to the government to assure the availability of assets after conviction—quite difficult. In addition, these requirements may make pursuing a restraining order inadvisable from the prosecutor's point of view because of the potential for damaging premature disclosure of the government's case and trial strategy and for jeopardizing the safety of witnesses and victims in racketeering and narcotics trafficking cases who would be required to testify at the restraining order hearing.

The problem of pre-conviction dispositions of property subject to criminal forfeiture is further complicated by the question of whether, simply by transferring an asset to a third party, a defendant may shield it from forfeiture. In civil forfeitures, such transfers are voidable, for the property is considered "tainted" from the time of its prohibited use or acquisition. But it is unclear whether, in the context of criminal forfeitures, the same principle is applicable so that improper pre-conviction transfers may be voided.

In sum, present criminal forfeiture statutes do not adequately address the serious problem of a defendant's pretrial disposition of his assets. Changes are necessary both to preserve the availability of a defendant's assets for criminal forfeiture, and, in those cases in which he does transfer, deplete, or conceal his property, to assure that he cannot as a result avoid the economic impact of forfeiture.

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[20] See, *e.g.*, *United States* v. *Crozier*, 674 F.2d 1293 (9th Cir. 1982), *petition for cert. filed*, No. 82-819 (Nov. 15, 1982).

A third major problem with current forfeiture statutes arises from the need to pursue virtually all forfeitures of drug-related property through civil proceedings. Until recently, civil forfeiture proceedings under title 21 were not perceived as particularly problematic. Indeed, in certain respects, civil forfeiture has advantages over criminal forfeiture. As noted above, property is generally seized early on in a civil forfeiture case, thus limiting the problem of transfers and concealment of assets. Also the government's burden of proof is lower in these cases. However, as drug trafficking has increased and the government has stepped up its enforcement and forfeiture efforts, the backlog of civil forfeiture cases in some parts of the country has become unmanageable. A way of relieving this problem would be to allow Federal prosecutors, in appropriate circumstances, to pursue criminal, rather than civil, forfeitures in drug cases. The problem with civil forfeiture is that even if the same facts that are at issue in a criminal trial are also dispositive of the forfeiture issue, it is still necessary for the government, in addition to the criminal case, to file a separate civil suit. And where the property of a defendant, or defendants, in the criminal case is located in more than one judicial district, a separate civil forfeiture suit must be filed in each of these districts.

A more efficient method of obtaining the forfeiture of assets of drug defendants would be to permit prosecutors the option of pursuing a criminal forfeiture in which the forfeiture action can be consolidated with the prosecution of the offense giving rise to forfeiture. In cases where this alternative could be pursued, valuable judicial and law enforcement resources could be saved.

A fourth significant problem is the financial burden aggressive pursuit of forfeiture cases places on our law enforcement agencies. As noted above, where the sale of forfeited property realizes less than the expenses incurred by the government in storing, maintaining, and selling the property, the net loss must be carried by the agency's budget. This occurs even though profits from other sales would be sufficient to offset these expenses. Thus, the financial resources of our law enforcement agencies are not augmented by profitable forfeitures, but they are depleted by those that are not profit producing.

Delays in obtaining civil forfeitures are a primary cause of the burgeoning expenses associated with forfeiture actions. Because of the backlog of civil cases in certain districts, obtaining a judicial forfeiture may take a significant amount of time. During this time the property is subject to deterioration and maintenance and storage costs mount. Under present law, such delays are frequently unavoidable even in uncontested cases, because the alternative of more efficient administrative forfeiture proceedings is not available if the value of the asset is $10,000 or more, a dollar ceiling that excludes many assets in drug forfeiture cases including virtually all boats and aircraft used in drug smuggling.

3. Provisions of the bill, as reported

This bill is divided into four titles. The first is comprised of a single section 101. This section sets forth an amended version of 18 U.S.C. 1963, the provision of current law governing criminal forfeiture (and other applicable criminal penalties) under the RICO stat-

ute. One of the bill's significant amendments to the current RICO statute is clarification of the forfeitability of proceeds of racketeering activity. There is now a split in the circuits on whether such profits are subject to forfeiture under the RICO statute, and the Supreme Court has granted certiorari in *Russello* v. *United States* [21] to review this issue. Others of the more significant amendments to 18 U.S.C. 1963 are designed to address the problem noted above of defendants defeating criminal forfeiture actions by removing, concealing, or transferring forfeitable assets prior to conviction. These amendments include clarification for the basis on which restraining orders may issue, new authority permitting a restraining order prior to indictment in certain circumstances, a provision setting out clear authority for voiding improper pre-conviction transfers of assets subject to criminal forfeiture, and a provision authorizing the court to order the defendant to forfeit substitute assets when his property originally subject to forfeiture has been made unavailable at the time of conviction.

Title II, which is comprised of sections 201 through 206, makes several amendments to the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 801 *et seq.*). The most significant of the amendments in title II is the creation in section 201 of a new criminal forfeiture statute that would be applicable in all felony drug cases. The provisions of this new criminal forfeiture statute for major drug offenses closely parallel those of the RICO forfeiture provisions amended in section 101, and include the various criminal forfeiture improvements approved by the Committee. Title II would also amend the civil forfeiture provisions of the narcotics laws to allow, in certain new circumstances, the forfeiture of real property, and to require the stay of civil forfeiture proceedings pending disposition of a related criminal case.

Title III, which is made up of sections 301 and 302, establishes a four-year trial program under which amounts realized by the United States from the forfeiture of drug profits and other drug-related assets are to be placed in a special fund which is to be available for appropriations to defray expenses incurred by the government in civil and criminal forfeiture actions under title 21, United States Code.

Title IV, which is comprised of sections 401 through 413, amends various sections of the Tariff Act of 1930 (19 U.S.C. 1202 *et seq.*). These amendments are designed primarily to achieve two purposes. First, they improve the civil forfeiture provisions of the customs laws, which, by virtue of 21 U.S.C. 881(d), are also applicable to civil forfeitures of drug-related assets. Most notable of these amendments is the expansion of the availability of efficient administrative forfeiture proceedings in uncontested cases. Second, title IV creates a Customs Forfeiture Fund, like that established for drug forfeitures in title III, that is to be available to meet expenses associated with seizures and forfeitures under customs laws.

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[21] *United States* v. *Martino*, 681 F.2d 952 (5th Cir. 1982) (en banc) (holding proceeds of arson-for-profit scheme subject to RICO criminal forfeiture), *cert. granted sub nom. Russello* v. *United States*, 103 S. Ct. 721 (1982) (No. 82-472).

SECTION-BY-SECTION ANALYSIS

SECTION 1

Section 1 provides that this Act may be cited as the "Comprehensive Forfeiture Act of 1983."

TITLE I

SECTION 101

Section 101 amends 18 U.S.C. 1963, the provision of current law which prescribes the penalties, including criminal forfeiture, for violations of the RICO statute (18 U.S.C. 1961 *et seq.*). The current penalties of fine and imprisonment are retained, but the provisions relating to criminal forfeiture have been amended and expanded. Each of the subsections of 18 U.S.C. 1963, as amended in section 101, is discussed below:

18 U.S.C. 1963(a)

Section 1963(a), as amended, sets out the penalties for racketeering offenses in violation of 18 U.S.C. 1962. Current fine and imprisonment levels are unchanged. Paragraphs (1), (2), and (3) describe property of the defendant which is to be subject to criminal forfeiture. Paragraphs (1) and (2) carry forward (but in clearer format) the description of forfeitable property appearing in current 18 U.S.C. 1963(a) (1) and (2). Paragraph (3) is new, and specifically provides for the forfeiture of proceeds derived from prohibited racketeering activity or unlawful debt collection. Both direct and derivative proceeds are forfeitable. As noted above, several courts have held that racketeering proceeds are not encompassed within current RICO forfeiture provisions and Supreme Court review of this issue is now pending. This limiting interpretation has significantly diminished the utility of the RICO criminal forfeiture sanction and is at odds with the overall purpose of this statute. Clarification of the forfeitability of racketeering proceeds has been included in past forfeiture legislation and criminal code revision legislation.[22]

To come within the scope of paragraph (3), property must constitute, or be derived from, proceeds the defendant obtained through the racketeering activity involved in the RICO violation. Thus, proceeds accruing to an enterprise or association involved in a RICO violation will be forfeitable only to the extent that they are derived from racketeering activity or unlawful debt collection.[23] For example, if only part of a corporation's affairs were conducted through a pattern of racketeering activity, the gain produced through this activity would be subject to forfeiture but the legitimately produced profits of the corporation would not.

In paragraph (3), the term "proceeds" has been used in lieu of the term "profits" in order to alleviate the unreasonable burden on the government of proving net profits. It should not be necessary

[22] See S. Rept. No. 97-307, 97th Cong., 1st Sess. 995 (1981).
[23] The terms "racketeering activity" and "unlawful debt" are defined in 18 U.S.C. 1961.

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for the prosecutor to prove what the defendant's overhead expenses were.[24]

S. 948 as introduced, not only specifically added proceeds to the description of property subject to forfeiture under 18 U.S.C. 1963(a), it also rephrased the description of forfeitable property under current section 1963(a) (1) and (2). While the Committee did not object to the substance of this revision, for it did no more than attempt to more fully explain the scope of current law, the revision was complex and, in the Committee's view, unnecessary. Preserving the existing language of 18 U.S.C. 1963(a) (1) and (2) and adding a specific reference to proceeds was deemed a better approach and the Committee adopted an amendment to accomplish this result. The ambiguity regarding forfeiture of proceeds is resolved, yet the body of case law otherwise interpreting the existing provisions of the RICO forfeiture statute can be retained. The Department of Justice concurred in this judgment.

As amended by section 101 of the bill, 18 U.S.C. 1963(a) also makes it clear that its criminal forfeiture provisions are to apply irrespective of any contrary provisions in State law. In addition, the final sentence of section 1963(a) emphasizes the mandatory nature of criminal forfeiture, requiring the court to order forfeiture in addition to any other penalty imposed. This is in accord with case law holding the forfeiture provision of the present RICO statute to be mandatory on the trial court.[25]

18 U.S.C. 1963(b)

As amended, section 1963(b) emphasizes that property subject to forfeiture under the RICO statute may be either real property or tangible or intangible personal property, and underscores an intent, consistent with current law,[26] that the concept of "property" as used in section 1963 is to be broadly construed. Forfeiture legislation submitted by the Administration in the last Congress (S. 2320), and passed with amendments by the Senate as part of S. 2572, included in this provision a lengthy recitation of examples of types of property and interests that could be subject to a RICO forfeiture. This language has been dropped because it is more appropriate to include such a discussion as part of the bill's legislative history. In essence, this language from the former forfeiture legislation emphasized the forfeitability of positions, offices, and employment contracts acquired or used in racketeering, of compensation or other benefits derived from such positions, and of amounts payable under contracts awarded or performed through racketeering. The Committee agrees that forfeiture of the right to exercise or benefit from such interests is fully consistent with the purposes of the RICO forfeiture sanction.

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[24] In *United States* v. *Jeffers*, 532 F.2d 1101, 1117, (7th Cir. 1976), aff'd in part, vacated in part, 432 U.S. 137 (1977), the court took notice of the "extreme difficulty in this conspiratorial, criminal area of finding hard evidence of net profits."

[25] *United States* v. *Godoy*, 678 F.2d 84 (9th Cir. 1982), *petition for cert. filed*, No. 82-538 (Sept. 27, 1982); *United States* v. *L'Hoste*, 609 F.2d 796 (5th Cir.), *cert. denied*, 449 U.S. 833 (1980).

[26] See *United States* v. *Rubin*, 559 F.2d 975 (5th Cir.), vacated and remanded another grounds, 439 U.S. 810 (1977), where the defendant was convicted on RICO and other charges arising out of embezzlement of union and employee welfare benefit plans and was ordered to forfeit his various union and benefit plan offices.

18 U.S.C. 1963(c)

Subsection (c) of 18 U.S.C. 1963, as amended by the bill, is a codification of the "taint" theory which has long been recognized in forfeiture cases.[27] Under this theory, forfeiture relates back to the time of the acts which give rise to the forfeiture. The interest of the United States in the property is to vest at that time, and is not necessarily extinguished simply because the defendant subsequently transfers his interest to another. Absent application of this principle a defendant could attempt to avoid criminal forfeiture by transferring his property to another person prior to conviction.[28]

The purpose of this provision is to permit the voiding of certain pre-conviction transfers and so close a potential loophole in current law whereby the criminal forfeiture sanction could be avoided by transfers that were not "arms' length" transactions. On the other hand, this provision should not operate to the detriment of innocent *bona fide* purchasers of the defendant's property. Therefore, section 1963(c), as amended by the bill, makes it clear that this provision may not result in the forfeiture of property acquired by an innocent *bona fide* purchaser. Such purchasers are entitled to relief under the new ancillary hearing procedure in section 1963(m) which was adopted by amendment by the Committee.

Under this provision, the jury could render a special verdict of forfeiture with respect to property used or acquired by the defendant in a manner rendering it subject to forfeiture, irrespective of the fact that it may have been transferred to a third party subsequent to the acts of the defendant giving rise to the forfeiture. Resolution of claims of third parties asserting that they are innocent *bona fide* purchasers, claims that will determine whether a transfer is ultimately voided, may be reserved for the post-trial ancillary hearing.[29] This procedure provides for more orderly consideration both of the forfeiture issue and the legitimacy of third party claims. Moreover, even if a transfer is sustained at the ancillary hearing, the fact that the jury will have determined that the property would have been forfeitable if it had remained in the hands of the defendant will allow the court to order the forfeiture of substitute assets of the defendant as provided in 18 U.S.C. 1963(d), as amended, to assure that the defendant does not retain the gain received from this pre-conviction transfer.

18 U.S.C. 1963(d)

This provision is new to the law. It provides that where property found to be subject to forfeiture is no longer available at the time of conviction, the court is authorized to order the defendant to forfeit substitute assets of equivalent value. This subsection addresses

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[27] See, *e.g., United States* v. *Simons*, 541 F. 2d 1351, 1352 (9th Cir. 1976), citing *United States* v. *Stolwell*, 133 U.S. 1 (1890).

[28] This result was not permitted in *United States* v. *Long*, 654 F. 2d 911 (3rd Cir. 1981), in which it was held that property derived from a violation of 21 U.S.C. 848 remained subject to criminal forfeiture although transferred to the defendant's attorneys more than six months prior to conviction, and that an order restraining the attorneys from transferring or selling the property was properly entered.

[29] Where it is clear that a forfeitable asset has been sold for value to an innocent purchaser, the Committee expects that the government would seek forfeiture of substitute assets of the defendant, as provided in section 1963(d), at the conclusion of trial and avoid the necessity of the purchaser petitioning for a post-trial hearing.

one of the most serious impediments to significant criminal forfeitures. Presently, a defendant may succeed in avoiding the forfeiture sanction simply by transferring his assets to another, placing them beyond the jurisdiction of the court, or taking other actions to render his forfeitable property unavailable at the time of conviction. Under this new provision, forfeiture of substitute assets would be authorized in five circumstances: where property found subject to forfeiture under section 1963(a), as amended, (1) cannot be located; (2) has been tranferred to, sold to, or deposited with, a third party;[30] (3) has been placed beyond the jurisdiction of the court;[31] (4) has been substantially diminished in value by any act or omission of the defendant:[32] or (5) has been commingled with other property that cannot be divided without difficulty.

18 U.S.C. 1963(e)

This provision sets forth the authority of the courts to enter restraining orders to preserve the availability of forfeitable assets until the conclusion of trial. Like current 18 U.S.C. 1963(b), this authority allows the court to enter a restraining order, require the execution of a satisfactory performance bond, or take other action to preserve the government's ability to reach the defendant's forfeitable assets after conviction. This provision expands current restraining order authority, however, by allowing, in certain limited circumstances, the entry of a pre-indictment restraining order. As noted above, the courts presently have authority to enter restraining orders only after the filing of an indictment or information.[33]

It is not infrequent that a defendant becomes aware that he is the target of a criminal investigation before the time he is formally charged. Indeed, most complex criminal cases, such as RICO cases and drug trafficking conspiracies, are preceded by a grand jury investigation, and it is current Department of Justice policy generally to notify the subjects of a grand jury investigation so that they may have an opportunity to appear before the grand jury. Thus, whether through formal notice of an ongoing grand jury investigation or through other means, it is often the case that defendants become aware of the government's development of a case against them and as a consequence have both the incentive and opportunity to move, to transfer or conceal forfeitable assets before the current jurisdiction of the courts to enter appropriate restraining orders may be invoked.

The new pre-indictment restraining order authority provided in section 1963(e), as amended, provides a mechanism to address this

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[30] The authority to order the forfeiture of substitute assets must be understood in conjunction with section 1963(c), as amended, which allows, in certain circumstances, the voiding of transfers to third parties. The bill does not permit the government to obtain forfeiture both of the transferred property and of substitute assets. Instead, it permits the government to reach substitute assets where the property cannot be reached once transferred or where such action is a preferable alternative to seizure of property sold to an innocent purchaser.

[31] This provision should be particularly helpful in combatting the problem of use of offshore banks as safe havens for crime-related assets.

[32] This provision will be of utility where a defendant substantially depletes a forfeitable asset in anticipation of its being ordered forfeited. It is phrased, however, so that it will not apply where the value of the property has been subject to minimal or ordinary depreciation.

[33] The same restraining order authority is set out in the other criminal forfeiture provision of current law, the CCE statute, 21 U.S.C. 848.

situation. However, since in such cases the government will be seeking to restrain the transfer or movement of property prior to the filing of formal charges, it is appropriate that this remedy be available only upon a strong showing by the government.

Paragraph (1)(A) provides that a restraining order may issue "upon the filing of an indictment or information charging a violation of section 1962 of this chapter [18 U.S.C. 1962] and alleging that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section." Thus, the probable cause established in the indictment or information is, in itself, to be a sufficient basis for issuance of a restraining order. While the court may consider factors bearing on the reasonableness of the order sought, it is not to "look behind" the indictment or require the government to produce additional evidence regarding the merits of the case as a prerequisite to issuing a post-indictment restraining order. Since a warrant for the arrest of the defendant may issue upon the filing of an indictment or information, and so the indictment or information is sufficient to support a restraint on the defendant's liberty, it is clear that the same basis is sufficient to support a restraint on the defendant's ability to transfer or remove property alleged to be subject to criminal forfeiture in the indictment.

In contrast to the pre-indictment restraining order authority set out in paragraph (1)(B), the post-indictment restraining order provision does not require prior notice and opportunity for a hearing. The indictment or information itself gives notice of the government's intent to seek forfeiture of the property. Moreover, the necessity of quickly obtaining a restraining order after indictment in the criminal forfeiture context presents exigencies not present when restraining orders are sought in the ordinary civil context. This provision does not exclude, however, the authority to hold a hearing subsequent to the initial entry of the order and the court may at that time modify the order or vacate an order that was clearly improper (*e.g.*, where information presented at the hearing shows that the property restrained was not among the property named in the indictment). However, it is stressed that at such a hearing the court is not to entertain challenges to the validity of the indictment. For the purpose of issuing a restraining order, the probable cause established in the indictment or information is to be determinative of any issue regarding the merits of the government's case on which the forfeiture is to be based.

Paragraph (1)(B) permits the court to enter a restraining order prior to indictment if, after notice and an opportunity for a hearing, the court determines that "there is a substantial probability that the United States will prevail on the issue of forfeiture and that failure to enter the order will result in the property being destroyed, removed from the jurisdiction of the court, or otherwise made unavailable for forfeiture" and also determines that "that the need to preserve the availability of the property through the entry of the requested order outweighs the hardship on any party against whom the order is to be entered." Thus, the standard for issuance of a restraining order prior to the filing of an indictment or information is a stringent one. It is stressed, however, that this stringent standard applies only in this context; it is not to be ex-

tended to restraining orders sought after indictment. A pre-indictment restraining order is to extend for no more than ninety days, unless extended by the court for good cause shown or unless an indictment or information has been filed in the interim.

Paragraph (2) describes those situations in which a preindictment restraining order may issue, on a temporary basis, without prior notice or opportunity for a hearing. In order to obtain such an *ex parte* order the government must establish probable cause to believe that the property is subject to forfeiture and that provision of notice would jeopardize the availability of the property. Certain types of property, particularly highly liquid assets forfeitable as proceeds of drug trafficking or cash producing racketeering schemes, may be easily moved, concealed or disposed of even in the relatively short period of time that may elapse between the giving of notice and the holding of an adversary hearing concerning the entry of a restraining order. In such cases, there may be a compelling need for a temporary *ex parte* order.

The permissibility of the postponement of notice and hearing until after the initial entry of a restraining order in a criminal forfeiture case has not been squarely addressed by the Supreme Court.[34] The Court has, however, addressed this issue with respect to the more intrusive action of *seizure* in the context of a civil forfeiture. In *Calero-Toledo* v. *Pearson Yacht Leasing Co.*,[35] a yacht on which marihuana was found was seized, pursuant to a civil forfeiture statute, without prior notice or adversary hearing. A three-judge district court, relying primarily on a 1972 Supreme Court case,[36] held that the failure of the forfeiture statute to provide for preseizure notice and hearing rendered it unconstitutional. The Supreme Court reversed, holding that immediate seizure of a property interest, without an opportunity for a prior hearing, was permitted in these limited circumstances, because, first, the seizure statute served a significant governmental purpose, *i.e.*, preventing continued criminal use of the property and enforcing criminal sanctions; second, prior notice might frustrate the purpose of the statute, since the property could be removed, concealed, or destroyed if advance warning of the seizure were given; and third, unlike the situation in *Fuentes*, the seizure was not initiated by self-interested private parties, but rather by government officials. Since these considerations are also present where the government seeks simply to restrain the transfer or disposition of property that may be subject to criminal forfeiture, it seems clear that postponement of notice and hearing is permitted.

The sole purpose of the bill's restraining order provision, like that in the current RICO and CCE statutes, is to preserve the status quo, *i.e.*, to assure the availability of the property pending disposition of the criminal case. Nonetheless, in at least three cases, defendants have argued with mixed results that entry of a restraining order was impermissible in that it was inconsistent

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[34] The United States has, however, filed a petition for certiorari to obtain review of this issue in *United States* v. *Crozier*, *supra*, note 20.

[35] 416 U.S. 663 (1974).

[36] *Fuentes* v. *Shevin*, 407 U.S. 67 (1972).

with the presumption of innocence.[37] In the Committee's view, the availability of restraining orders is essential in the area of criminal forfeiture and a pretrial restraining order for the purpose of preserving assets does not impinge on the trial concept of presumption of innocence.

The Committee adopted an amendment to the RICO restraining order provision adding a new paragraph (3). This amendment provides that information and evidence received at a hearing concerning a restraining order need not conform to the standards of admissibility set out in the Federal Rules of Evidence. If the rules of admissibility were to apply at such hearings, as has been held by the Ninth Circuit,[38] this would mean that the government could not rely on hearsay or proffer, and thus might be required to expose its witnesses prematurely. In certain cases, this may jeopardize the safety of witnesses or subject them to pressures that may dissuade them from testifying at trial. The cases to which criminal forfeiture are to apply under this bill, racketeering and drug trafficking cases, are the very sorts of cases in which the potential for intimidation of and danger to witnesses is of greatest concern. Generally, the Federal Rules of Evidence do not apply to "preliminary examinations in criminal cases." [39] In the Committee's view, there are compelling reasons for assuring that this principle extends to hearings concerning the entry of restraining orders in criminal forfeiture cases.

18 U.S.C. 1963(f)

Subsection (f) of 18 U.S.C. 1963, as amended by the bill, governs matters arising during the period from the entry of the order of forfeiture until the time that the Attorney General directs disposition of the property. While this subsection addresses a number of issues, these provisions have been formulated to retain a degree of flexibility. Particularly in RICO cases, where forfeited property may include ongoing businesses, such flexibility is a necessity.

As is provided in current 18 U.S.C. 1963(c), upon conviction of the defendant the court is to enter a judgment of forfeiture[40] and authorize the Attorney General to seize the property upon such terms and conditions as the court shall deem proper.[41] After entry of the order of forfeiture, it may be necessary to obtain an accurate accounting of the property, and the property may continue to be vulnerable to depletion or transfer if it is not immediately seized. Thus, subsection (f) provides that the court may appoint receivers or trustees and may enter appropriate restraining orders. Subsec-

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[37] See *United States* v. *Scalzitti*, 408 F. Supp. 1014, 1015 (W.D. Pa. 1975) and *United States* v. *Bello*, 470 F. Supp. 723, 724-725 (S.D. Cal. 1979) (defendant was no more stripped of the presumption of innocence by a restraining order than would be the case were he required to post bond); but see *United States* v. *Mandel*, 408 F. Supp. 679, 682-684 (D. Md. 1976). The presumption of innocence is an evidentiary standard applied in criminal trials. It does not serve as a substantive bar to any interference with a defendant s interests prior to an adjudication of guilt. *Bell* v. *Wolfish*, 441 U.S. 520, 533 (1979).

[38] *United States* v. *Crozier*, *supra* note 20; *United States* v. *Spilotro*, 680 F.2d 612 (9th Cir. 1982).

[39] Rule 1101(dX3) of the Federal Rules of Evidence.

[40] When an indictment or information alleges that property is subject to criminal forfeiture, a special verdict must be returned as to the extent of the property subject to forfeiture. Rule 31 of the Federal Rules of Criminal Procedure.

[41] This is also the procedure mandated under Rule 32 of the Federal Rules of Criminal Procedure.

tion (f) also permits the use of income accruing to or derived from an enterprise to offset ordinary and necessary expenses of the enterprise that are legally required or which are necessary to protect the interests of the United States or third parties. Thus, the value of an enterprise may be preserved until it is disposed of.

18 U.S.C. 1963(g)

Subsection (g) concerns matters regarding the disposition of property. Following the seizure of the property, the Attorney General is authorized to direct its disposal by sale or other commercially feasible means, making due provision for the rights of any innocent persons. As in current law, this subsection provides that an interest that is not exercisable by, or transferable for value to, the United States shall expire and shall not revert to the defendant. However, unlike current law, subsection (g) specifically prohibits reacquisition by the defendant of property he has forfeited.

Since, under current practice, third parties who assert an interest in property which is the subject of criminal forfeiture may not intervene in the criminal case—a principle set out in subsection (j)—subsection (g) authorizes the court to stay disposition of the property pending an appeal of the criminal case, if the third party demonstrates that the disposition of the property will result in irreparable injury, harm, or loss to him.

Once the property has been disposed of, the proceeds are to be used to pay the expenses of the forfeiture and sale, including costs arising from the seizure, maintenance, and custody of the property. The remaining amounts are to be deposited in the general fund of the Treasury.

18 U.S.C. 1963(h)

Subsection (h) of 18 U.S.C. 1963, as set forth in section 101 of the bill, describes several aspects of the authority of the Attorney General with respect to property that has been ordered forfeited. This authority is in essence carried forward from existing law, although in a more straightforward manner. Under 18 U.S.C. 1961, the Attorney General may designate other officials to exercise this authority or any other powers conferred upon him by the RICO statute. The authority described in subsection (h) includes: (1) granting petitions for remission or mitigation of forfeiture, restoring forfeited property to victims, and taking other actions to protect the rights of innocent persons; (2) compromising claims; (3) awarding compensation to persons providing information that led to a forfeiture; (4) directing the disposition, by the United States, of the property; and (5) taking measures to protect and maintain the property pending its disposition.

18 U.S.C. 1963(i)

In current 18 U.S.C. 1963(c), the procedures for disposition of the forfeited property, for consideration of petitions for remission and mitigation of forfeiture, and for other postseizure matters are governed by the customs laws. In some respects, however, these customs laws provisions have been found not adequate to address some of the particularly complex issues that arise in RICO forfeiture cases. Subsection (i) of 18 U.S.C. 1963, as amended by the bill,

therefore provides for the development and promulgation of regulations to govern certain postseizure matters. These regulations may be drafted to address some of the unique problems that arise in RICO forfeitures. Pending the promulgation of these regulations, the currently applicable provisions of the customs laws would remain in effect.

18 U.S.C. 1963(j)

Subsection (j) of the RICO forfeiture provisions, as amended by the bill, sets forth the recognized principle that third parties may not intervene in the criminal case. Moreover, once the indictment or information is filed, a third party is not to commence a civil suit against the United States; instead the third party should avail himself of the ancillary hearing procedure added by the Committee as a final section of the RICO amendments (18 U.S.C. 1963(m)).[42] This provision assures a more orderly disposition of both the criminal case and third party claims. Indeed, it is anticipated that the new hearing procedure should provide for more expedited consideration of third party claims than would the filing of separate civil suits.

In S. 829 as introduced, this provision of the bill required third parties to exhaust the administrative remedy of petitioning the Attorney General for remission or mitigation of forfeiture before seeking judicial resolution of their claims. In light of the Committee's addition of the new ancillary hearing procedure in section 1963(m), which is based on the recognition that third parties asserting legal claims inconsistent with the order of forfeiture are entitled to a judicial resolution of their claims, the language of subsection (j) was amended to reflect the purpose and scope of the new hearing procedure.

18 U.S.C. 1963(k)

This new subsection of 18 U.S.C. 1963 simply emphasizes the jurisdiction of the court to enter under these criminal forfeiture provisions, without regard to the location of the property. This principle is one of the distinctions between civil and criminal forfeitures because in civil forfeitures, the power of the court currently extends only to property within the district in which it is located.

18 U.S.C. 1963(l)

Subsection (l) of 18 U.S.C. 1963, as amended by the bill, authorizes the court to order the taking of depositions to facilitate the identification and location of property that has been declared forfeited and the disposition of petitions for remission or mitigation of forfeiture. The taking of such depositions will provide for a more orderly and fair consideration of these matters and will permit the development of a more complete record.[43]

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[42] This provision is not intended to preclude a third party with an interest in property that is or may be subject to a restraining order from participating in a hearing regarding the order, however.

[43] Although this provision does not specify the same authority to order depositions for the purposes of resolving matters raised in a hearing occurring under section 1963(m), discussed below, in such judicial hearings, this authority would be part of the inherent power of the court.

18 U.S.C. 1963(m)

This new subsection added to 18 U.S.C. 1963 was not included in S. 829 as introduced. It provides for an ancillary hearing to be held after conviction of the defendant at which third parties asserting a legal interest in property that has been ordered forfeited may obtain a judicial resolution of their claims.

Until recently, the Department of Justice had adhered to the position that all third parties, whether asserting a legal or equitable basis for relief from an order of criminal forfeiture, should, at least in the first instance, pursue the remedy of petitioning the Attorney General for remission or mitigation of forfeiture.[44] Traditionally, the Attorney General's decision with respect to such petitions, petitions which are most frequently filed as the result of civil forfeiture actions, has been viewed entirely as a matter of discretion and not subject to judicial review. Since third parties with interests in criminally forfeitable property may not participate in the criminal trial, while all parties with an interest in civilly forfeitable property may participate in judicial forfeiture proceedings, strict application of the principle of discretionary, nonreviewable administrative decisions on third party claims in the criminal forfeiture context had been of concern to the Committee.

After introduction of S. 829, the Department of Justice informed the Committee that their position with respect to third party claims in the criminal forfeiture context had changed. The Department's new position is that third parties who assert claims to criminally forfeited property which, in essence, are challenges to the validity of the order of forfeiture are entitled to a judicial determination of their claims. Thus, it would be improper to require such parties to seek relief in the remission and mitigation process (as may have been implicit in the bill as introduced), since the granting of such petitions is solely a matter of executive discretion. However, the remission and mitigation process would remain the appropriate exclusive remedy for third parties who assert not a legal basis for relief, but rather mere equitable grounds.

Criminal forfeiture is an *in personam* proceeding. Thus, an order of forfeiture may reach only property of the defendant, save in those instances where a transfer to a third party is voidable. Thus, if a third party can demonstrate that his interest in the forfeited property is exclusive of or superior to the interest of the defendant, the third party's claim renders that portion of the order of forfeiture reaching his interest invalid. The Committee strongly agrees with the Department of Justice that such third parties are entitled to judicial resolution of their claims.

There is, however, presently no statutory provision to specifically address procedures for the resolution of such claims in the criminal forfeiture context. The Department of Justice suggested, and the Committee agreed, that a procedure for expedited, judicial resolution of these claims be included in the criminal forfeiture provisions of the bill. The amendment adopted by the Committee adding a new subsection (m) to the RICO provisions provides such proce-

[44] This practice was sanctioned in *United States* v. *Mandel*, 505 F. Supp. 189 (D. Md. 1981).

dures and was drafted with the assistance of the Department of Justice.[45]

Under the new ancillary hearing procedure, the government, following the entry of an order of forfeiture is to publish notice of the order of forfeiture and its intent to dispose of the property. Direct written notice to interested third parties may serve as a substitute for published notice. Within thirty days after publication of notice or the receipt of direct notice, any third party asserting a legal interest in the property ordered forfeited may petition the court (the court having heard the criminal case) for a hearing to adjudicate the validity of his alleged interest. The hearing is to be held before the court alone.

If possible, the hearing is to be held within thirty days of the filing of the petition,[46] and the court may hold a consolidated hearing to resolve all or several petitions arising out of a single case. At the hearing, both the petitioner and the United States may present evidence and witnesses, and cross-examine witnesses who appear. In addition to evidence and testimony presented at the hearing, the court may consider relevant portions of the record of the criminal case. This will allow the court to quickly dispense with claims that have already been considered at trial, as for example, where the jury has already determined that the third party held the property only as a nominee of the defendant or that a transfer to the third party was a sham transaction.

Paragraph (6) provides that a third party will prevail if his claim falls into one of two categories: first, where the petitioner had a legal interest in the property that, at the time of the co nmission of the acts giving rise to the forfeiture, was vested in him rather than the defendant or was superior to the interest of the defendant; or second, where the petitioner acquired his legal interest after the acts giving rise to the forfeiture but did so in the context of a *bona fide* purchase for value and had no reason to believe that the property was subject to forfeiture.[47] Since the United States will have already proven its forfeiture allegations in the criminal case beyond a reasonable doubt, the burden of proof at the hearing will be on the third party. However, the petitioner is held only to a preponderance of the evidence standard. Following the court's disposition of all third party petitions, or if no third party filed a petition within the time allowed, the United States would then have clear title to the property. This final provision attempts to address the problems increasingly encountered by the government in selling criminally forfeited property because of concerns about the government's ability to convey clear title to such property in the absence of a judicial resolution of third party claims.

A third party who fails to obtain relief under the new ancillary hearing provision or who does not file a petition for a hearing may seek equitable relief from the Attorney General by filing a petition

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[45] The same provision has been added to the criminal forfeiture statute for all drug felonies set forth in section 201 of the bill.

[46] The court may decline to grant a hearing, for example, if the petition fails to state any basis for relief described in this provision.

[47] The provision should be construed to deny relief to third parties acting as nominees of the defendant or who have knowingly engaged in sham or fraudulent transactions. The standard for relief reflects the principles concerning voiding of transfers set out in 18 U.S.C. 1963(c), as amended by the bill.

for remission or mitigation of forfeiture. The Attorney General's decision on such petition shall not be subject to judicial review, as is the case under current law.

TITLE II

SECTION 201

Section 201 of the bill amends the Comprehensive Drug Abuse Prevention and Control Act of 1970 [48] by adding a new section which sets forth a criminal forfeiture statute that is to be applicable to all felony offenses under the Act. This statute is, in nearly all respects, identical to the RICO criminal forfeiture statute as amended in section 101 of the bill. Currently, the CCE statute,[49] which punishes those who control a group of five or more persons who are engaged in continuing drug-related crimes, is the sole provision of title 21, United States Code, which provides for the sanction of criminal forfeiture. However, the civil forfeiture provisions of title 21 [50] are quite broad and permit the forfeiture of a variety of property used in drug offenses, including the proceeds of drug transactions. Civil forfeiture has certain advantages over criminal forfeiture. For example, the standard of proof is lower, the government commences its case with seizure of the property, thus reducing the opportunities for improper disposition of forfeitable assets, and civil forfeiture may be used when prosecution is not possible as where the defendant owner is a fugitive. On the other hand, there are certain drawbacks to civil forfeiture that could be avoided if prosecutors had the option of seeking criminal forfeiture in all major drug cases.

Civil forfeiture is an *in rem* proceeding against the property itself, and thus a separate civil action must be filed in each district in which the property is located. In cases of large drug trafficking operations, forfeitable property may be located in several districts. Thus, separate but parallel civil actions must be filed in each district in which such property is located. Criminal forfeiture, on the other hand, is an *in personam* action, and therefore the jurisdiction of the court to enter orders affecting property subject to criminal forfeiture is not limited to property within the district in which the criminal case is tried.

Where the issues relating to civil forfeiture are the same as or closely related to those that will arise in the prosecution of a drug offense, it is a waste of valuable judicial and prosecutive resources to require separate civil forfeiture proceedings against property of the defendant even though the evidence presented in the criminal case will be largely dispositive of the civil forfeiture action. The forfeiture of more significant amounts of drug-related property would likely be achieved if the judge and jury considering the criminal case were also permitted to determine the forfeiture issue, and the prosecutor and investigators who have prepared the criminal case can more readily apply their energy and expertise to an aggressive pursuit of criminal forfeiture.

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[48] 21 U.S.C. 801 *et seq.*
[49] 21 U.S.C. 848.
[50] 21 U.S.C. 881.

Thus, a more efficient mechanism for achieving the forfeiture of a defendant's proceeds from his drug trafficking or of other property he has used in the offense is to permit the criminal forfeiture of such property and thereby consolidate the forfeiture action with the criminal prosecution. Section 201 creates such a mechanism. To the greatest extent possible, the provisions of the title 21 criminal forfeiture statute set out in section 201 of the bill parallel those of amended RICO criminal forfeiture provisions set out in section 101.

The new criminal forfeiture statute created in section 201 of the bill is to appear as section 413 of the Comprehensive Drug Abuse Prevention and Control Act. This statute is divided into the following subsections:

Subsection (a)—Property subject to criminal forfeiture

Subsection (a) provides that the criminal forfeiture sanction created in section 201 of the bill is to apply to all drug felonies in titles II and III of the Comprehensive Drug Abuse Prevention and Control Act.[51] The types of property which are to be subject to an order of criminal forfeiture are described in paragraphs (1), (2), and (3) of subsection (a). The first category of property is that which constitutes or is derived from the proceeds the defendant obtained as a result of the violation for which he was convicted. The same type of property is now subject to civil forfeiture under 21 U.S.C. 881(a)(6). The reasons for using the term "proceeds" to define this type of property were discussed *supra* in the context of the amendments to the RICO criminal forfeiture provisions. The type of property which is subject to criminal forfeiture under paragraph (2) is that which is "used, or intended to be used * * * to commit, or to facilitate the commission of" the offense for which the defendant was convicted. This is generally the manner in which property subject to civil forfeiture is defined in 21 U.S.C. 881, although section 881 refers to specific types of property such as vehicles, records, containers, and equipment. Subsection (a)(2) of the bill's criminal forfeiture statute, on the other hand, refers simply to "property" used in the violation.

The description of property subject to criminal forfeiture which is set out in subsection (a)(3) carries forward that portion of the present CCE statute which authorizes the forfeiture of interests in, or which afford a source of control over, a continuing criminal enterprise.[52]

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[51] The felony offenses under titles II and III of the Comprehensive Drug Abuse Prevention and Control Act are violations of 21 U.S.C. 841 (except first offenses involving Schedule V substances and distribution of small amounts of marihuana for no remuneration); 21 U.S.C. 842 (in cases of repeat violations of certain more serious regulatory offenses); 21 U.S.C. 843 (which addresses knowing and intentional violations concerning fraud and offenses involving counterfeit substances, and also the use of communications facilities in committing felonies under the Act); 21 U.S.C. 844(a) (second offense of possession); 21 U.S.C. 845 (providing special penalties for distribution to persons under 21); 21 U.S.C. 846 (attempt and conspiracy where the underlying offense was a felony); 21 U.S.C. 848 (continuing criminal enterprise); 21 U.S.C. 952 (importation of controlled substances); 21 U.S.C. 953 (exportation of controlled substances); 21 U.S.C. 955 (possession of Schedule I or II or narcotic drugs on board vessels arriving in or departing the United States); 21 U.S.C. 955a (manufacture, distribution, or possession with intent to manufacture or distribute controlled substances on board vessels); 21 U.S.C. 955c (attempt or conspiracy to commit a violation of 21 U.S.C. 955a); 21 U.S.C. 957 (export and import by certain nonregistrants); 21 U.S.C. 959 (manufacture or distribution for purposes of unlawful importation); 21 U.S.C. 963 (attempt or conspiracy to commit felony importation offenses of title III of the Act).

[52] The separate criminal forfeiture provisions of 21 U.S.C. 848 are repealed in section 203 of the bill.

Subsection (a) also emphasizes that the entry of an order of forfeiture is mandatory following conviction. The mandatory nature of criminal forfeiture was discussed *supra* in the context of the RICO forfeiture amendments.

Subsection (b)—Meaning of term "property"

Like 18 U.S.C. 1963(b), as amended in section 101 of the bill, this subsection of the narcotics criminal forfeiture statute makes it clear that property subject to criminal forfeiture may be real property or tangible or intangible personal property.

Subsection (c)—Third party transfers

This subsection sets forth the same principles allowing the voiding of certain pre-conviction transfers of forfeitable assets. It is identical to subsection (c) of the RICO forfeiture provisions as amended in section 101 of the bill. For further discussion of this provision, see the analysis concerning 18 U.S.C. 1963(c), as amended, *supra.*

Subsection (d)—Substitute assets

Subsection (d) of the new drug criminal forfeiture provision sets out the same provision authorizing the forfeiture or substitute assets of the defendant as is included in the RICO forfeiture amendments in section 101 of the bill. For a further discussion of this provision see the analysis of section 101 above concerning new 18 U.S.C. 1963(d).

Subsection (e)—Presumption of forfeitability

The extremely lucrative nature of drug trafficking is well established, and indeed is a primary reason why the forfeiture of the proceeds of drug transactions is necessary to effectively deter and punish such conduct. However, it is often difficult to produce direct evidence that particular property of a defendant constitutes, or was purchased with, such proceeds. There are certain circumstances which are indicative of the fact that particular property does represent such proceeds. The purpose of subsection (e) is to establish a permissive inference that property is subject to forfeiture when such circumstances are established.

As introduced, S. 829 did not contain this provision. However, the explanatory materials which accompanied the President's transmittal of this legislation to the Congress referred to such a provision. Thus its omission may have been inadvertent. Since the Committee determined that such a presumption would be extremely useful in obtaining the forfeiture of the huge profits produced by illicit drug trafficking, it adopted an amendment inserting this provision. This presumption is drawn from an analogous section of the forfeiture provisions of H.R. 3963, as passed by the House and Senate at the close of the 97th Congress.[53]

In order to invoke the inference set out in subsection (e) that particular property is subject to criminal forfeiture under the narcotics forfeiture statute of section 201 of the bill, two elements must

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[53] As previously noted, the President withheld approval of this measure for reasons unrelated to the forfeiture provisions.

be established by the government. First, the defendant must have acquired the property during, or within a reasonably related time after, the period during which he committed the violation for which he was convicted. Second, there must be no likely source for the property other than the violation. This second element is akin to the familiar "net worth" method of proof commonly used in tax cases. Once these factors are established, the trier of fact may reject application of the presumption, or more accurately, the inference set out in subsection (e) if it is not merited under the facts of the case or in light of evidence produced by the defendant which would bring into question its validity if it were applied.

Framed as a permissive and rebuttable inference rather than a mandatory presumption, the presumption in subsection (e) would appear to meet constitutional requirements.[54]

Subsection (f)—Protective orders

Subsection (f) authorizes the court to enter appropriate restraining orders and injunctions, require the execution of performance bonds, and take other actions to protect the availability of property that may be subject to criminal forfeiture. This authority is the same as that provided in the analogous provision of the amendments to the RICO criminal forfeiture statute in section 101. For a discussion of this protective order provision, see the analysis *supra* of that part of section 101 relating to 18 U.S.C. 1963(e).

Subsection (g)—Warrant of seizure

This subsection of the new criminal forfeiture statute set out in section 201 authorizes the court to issue a warrant of seizure, based upon a probable cause showing, if it further determines that a protective order issued under subsection (f) would not be sufficient to assure the availability of the property for forfeiture. The types of property subject to forfeiture in narcotics cases are often in forms that are easily moved or concealed, or are highly liquid. With respect to this type of property, entry of a restraining order may not be adequate to assure that the property will be available in the event the defendant is convicted. In such cases, it may be necessary for the government to seize the property and either take custody of it or transfer custody to the court.

Subsection (h)—Execution

This subsection, which deals with matters after the entry of the order of forfeiture up to the time that the property is to be disposed of, corresponds to proposed 18 U.S.C. 1963(f) as set out in section 101 of the bill. Therefore, the analysis of that provision should be referred to with respect to this subsection.

Subsection (i)—Disposition of property

Subsection (i), which deals with matters concerning the disposition of property that has been ordered forfeited, correponds to proposed 18 U.S.C. 1963(g) as set out in section 101 of the bill. Again, the analysis of that portion of the amended RICO forfeiture provision applies to this subsection.

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[54] See *Ulster County Court* v. *Allen*, 442 U.S. 140 (1979).

Subsection (j)—Authority of the Attorney General

This subsection, like the analogous provision of the amended RICO forfeiture provision set out in section 101 of the bill, enumerates the authority of the Attorney General [55] with respect to certain matters concerning forfeited property. These powers include granting petitions for remission or mitigation of forfeiture and taking other actions to protect the interests of innocent persons, compromising claims concerning forfeited property, making awards of compensation, directing disposition of forfeited property by the United States,[56] and taking appropriate measures to maintain and safeguard forfeited property pending its disposition.

Subsection (k)—Applicability of civil forfeiture provisions

Subsection (k) provides that, except to the extent that they are inconsistent with provisions of the proposed criminal forfeiture statute set out in section 201 of the bill, the provisions of 21 U.S.C. 881(d) are to apply to criminal forfeitures under the proposed statute. The provisions of 21 U.S.C. 881(d) state that such matters as the disposition of forfeited property and proceeds from the sale thereof, remission and mitigation of forfeitures, and the compromise of claims arising out of forfeiture actions are to be governed by the analogous provisions of the customs laws. Currently, these aspects of the customs laws apply both to civil forfeitures under 21 U.S.C. 881(a) and criminal forfeitures under the CCE statute (21 U.S.C. 848).

Subsection (l)—Bar on intervention

Like subsection (j) of the RICO forfeiture statute as amended in section 101 of the bill, this subsection bars intervention by third parties in the criminal case and provides that once the criminal case is commenced, any third party with a claim arising out of the forfeiture action should seek relief under the ancillary hearing procedure set forth in subsection (o) rather than file any separate civil suit against the United States. For further discussion of this provision see the analysis *supra* of the analogous RICO provision set forth in section 101 of the bill.

Subsection (m)—Jurisdiction to enter orders

Like subsection (k) of the bill's amendment of the RICO forfeiture provisions, this subsection simply emphasizes that the court may enter orders in a criminal forfeiture case without regard to the location of the property that may be subject to criminal forfeiture or that has been ordered criminally forfeited.

Subsection (n)—Depositions

This subsection authorizes the court to order the taking of depositions to facilitate the location and identification of property that has been ordered criminally forfeited and to facilitate the disposition of petitions for remission or mitigation of forfeiture. The same

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[55] As authorized in 21 U.S.C. 871, all functions vested in the Attorney General under the Comprehensive Drug Abuse Prevention and Control Act of 1970 have been delegated to the Drug Enforcement Administration by regulation. See 28 C.F.R. 0.100(b).

[56] Disposition of forfeited property is to be governed by 21 U.S.C. 881(e).

language appears as subsection (1) of the proposed revision of the RICO forfeiture provisions in section 101 of the bill. See the analysis of proposed 18 U.S.C. 1963 (1) *Supra.* This authority supplements the authority to take testimony regarding petitions for remission or mitigation of forfeiture now set out in 19 U.S.C. 1618.

Subsection (o)—Ancillary hearing to resolve third party claims

This subsection sets forth the same ancillary hearing provision for judicial resolution of third party claims as that which appears as 18 U.S.C. 1963(m) section 101 of the bill. The analysis of that part of section 101 should be referred to for explanation of this provision.

SECTION 202

21 U.S.C. 824(f) provides for the forfeiture of controlled substances that are held by a distributor, dispenser, or manufacturer of controlled substances whose registration has been revoked. This amendment to 21 U.S.C. 824(f) simply codifies the "taint" theory discussed *supra.* The principle that the interest of the United States in forfeited property vests at the time of the acts giving rise to the forfeiture is well established in the context of civil forfeitures.

SECTION 203

Section 203 of the bill simply deletes the separate criminal forfeiture provisions of the Continuing Criminal Enterprise statute set out at 21 U.S.C. 848. Criminal forfeitures arising out of a violation of the CCE statute are to be governed by the new criminal forfeiture statute set out in section 201 of the bill.

SECTION 204

Section 204 of the bill amends certain provisions of 21 U.S.C. 881, which provides for the civil forfeiture of a variety of drug-related property, and which also governs certain procedural matters both in civil forfeitures and in criminal forfeitures under the CCE statute.

The first amendment would add to the list of property subject to civil forfeiture set out in section 881(a) real property which is used or intended to be used in a felony violation of the Drug Abuse Prevention and Control Act. This provision would also include an "innocent owner" exception like that now included in those provisions permitting the civil forfeiture of certain vehicles and moneys or securities.

The amendments to subsections (b), (c), (d), and (e) of section 881 are essentially technical or conforming amendments. As noted above, certain of these provisions apply not only to civil forfeitures but also to criminal forfeitures under the current CCE statute, since these provisions of section 881 refer simply to forfeitures "under this subchapter." To clarify the applicability of these provisions to both civil and criminal forfeitures, appropriate clarifying language has been inserted.

Section 204 also adds two new subsections at the end of section 881. The first provides that all right, title, and interest in property which is subject to civil forfeiture under section 881(a) vests in the United States upon the commission of the acts giving rise to the forfeiture. As discussed above, this principle is well established in current law. The second new subsection to be added to section 881 provides for a stay of civil forfeiture proceedings when the government has commenced a criminal case that involves issues the same as or related to those on which the forfeiture action is based. Generally, the courts have been willing to grant such stays of civil forfeiture proceedings when the government has commenced a criminal action concerning the same acts that have given rise to the forfeiture.[57] Absent such a stay, the government may be compelled in the context of the civil forfeiture action to disclose prematurely aspects of its criminal case.

SECTION 205

Section 205 simply adds a new section at the end of title III of the Comprehensive Drug Abuse Prevention and Control Act to make it clear that the criminal forfeiture statute proposed in section 201 of the bill, which is to be located in title II of the Act, applies to felony violations of title III of the Act as well. Title III of the Act governs offenses concerning the importation and exportation of controlled substances.

SECTION 206

Section 206 of the bill amends the table of contents of the Comprehensive Drug Abuse Prevention and Control Act of 1970 to reflect the two new sections added by sections 201 and 205 of the bill.

TITLE III

SECTION 301

Section 301 amends U.S.C. 881(e) to achieve two purposes. First, it provides that the Attorney General may transfer drug-related property forfeited under title 21, United States Code, to another Federal agency, or to an assisting State or local agency, pursuant to section 616 of the Tariff Act (19 U.S.C. 1616), as amended in section 408 of the bill. Often, State and local law enforcement agencies give significant assistance in drug investigations that result in forfeitures to the United States. However, there is presently no mechanism whereby the forfeited property may be directly transferred to these agencies for their official use. This amendment, in conjunction with the Tariff Act amendment cited above, will permit such transfers and thereby should enhance important cooperation between Federal, State, and local law enforcement agencies in drug investigations. The second amendment to 21 U.S.C. 881(e) provides for the deposit of moneys realized by the United States in drug for-

[57] When both civil and criminal proceedings arise out of the same or related transactions, the government is, as a general rule, entitled to a stay of discovery in the civil action until disposition of the criminal matter. See, *e.g.*, *United States* v. *One 1967 Buick Hardtop Electra*, 304 F. Supp. 1402 (W.D. Pa. 1969), and cases cited therein.

feitures into the Drug Assets Forfeiture Fund created by section 302.

SECTION 302

Section 302 amends 21 U.S.C. 881 by adding a new subsection (j) that would create, for a trial four-year period, a Drug Assets Forfeiture Fund from which moneys could be appropriated to defray the mounting costs associated with forfeiture actions. (A similar fund for customs forfeitures is created in section 407 of the bill.) Presently, when any amounts are realized by the United States from the forfeiture of drug-related assets, these amounts must be deposited in the general fund of the Treasury. Therefore, they are not available to defray the expenses of forfeiture in those cases where the expenses associated with the forfeiture of a particular piece of property exceed the amount realized by the sale of the property.

Under new subsection (j), the amounts realized in profitable forfeitures would be deposited in a Drug Assets Forfeiture Fund which would be available, through the appropriations process, for payments, at the discretion of the Attorney General, for four specified purposes. These purposes are: (1) the payment of expenses necessary to inventory, safeguard, maintain, advertise or sell the property, including payments for contract services or payments to State and local agencies which may provide these services; (2) payments for information or assistance relating to a drug investigation or leading to a forfeiture of drug assets; (3) the compromise and payment of valid liens against forfeited property; and (4) disbursements to innocent persons in connection with the remission and mitigation of forfeiture. Reward payments from the fund in excess of $10,000 must be authorized by either the Attorney General, Deputy or Associate Attorney General, Director of the Federal Bureau of Investigation, or the Administrator of the Drug Enforcement Administration. These rewards also may not exceed a maximum of $150,000, or, in the case of a reward in a forfeiture case, the lesser of $150,000 or one quarter the amount realized by the United States in the forfeiture action.

The authorized level of appropriations from the Fund for fiscal years 1984 through 1988 ranges from $10,000,000 in the first year to $20,000,000 in the last two years, but is not to exceed the total amount deposited in the Fund in the prior fiscal year. This appropriation ceiling applies to money for the first three purposes of the Fund specified in subsection (j)(1). For the fourth purpose—disbursements to innocent persons granted remission or mitigation of forfeiture—moneys may be appropriated from the Fund as may be necessary. Not less than four months after the end of each fiscal year, the Attorney General is to submit to the Congress a detailed report on the amounts deposited in the Fund and expenditures made out of moneys appropriated from the Fund.

TITLE IV

Title IV of the bill sets forth several amendments to the Tariff Act of 1930. These provisions govern the seizure and civil forfeiture of property under the customs laws, and are also applicable, by

virtue of 21 U.S.C. 881, to seizure and forfeiture of drug-related property. Briefly, these amendments provide for: (1) the expanded use of efficient administrative forfeiture proceedings in cases in which no party comes forward to contest a civil forfeiture action; (2) enhanced cooperation between Federal and State and local law enforcement agencies by permitting the transfer of federally forfeited property to assisting State and local agencies and by providing clear authority for the discontinuance of Federal forfeiture actions in favor of forfeitures under State law; and (3) the creation of a Customs Forfeiture Fund to be available to defray expenses associated with forfeiture actions under the customs laws.

SECTION 401

Section 401 amends 19 U.S.C. 1607, which in conjunction with sections 1608 and 1609 of title 19, United States Code, currently governs the procedures for the forfeiture of property valued at $10,000 or less. Under these provisions, notice of the seizure of the property is to be published and written notice is to be given to each party who appears to have an interest in the property. If no party comes forward to contest the forfeiture, the property may be forfeited in an administrative proceeding pursuant to 19 U.S.C. 1609. If a party does contest the forfeiture and posts the bond required under 19 U.S.C. 1608, a judicial proceeding must be held regarding the forfeiture. Significant numbers of forfeitures under the drug and customs laws are uncontested. However, the more efficient administrative forfeiture proceeding is available only with respect to a limited number of these cases because the property involved frequently exceeds the current $10,000 valuation ceiling. Thus, in a significant number of cases, judicial proceedings are required even though the forfeiture action goes uncontested. In these cases, the overcrowding of court dockets often means a delay of more than one year before the case may be heard, and during this period of delay the property is subject to deterioration and the costs to the government in maintaining and safeguarding the property escalate. To address this problem, section 401 and other of the amendments set out in title IV amend current law to make administrative forfeiture proceedings available in uncontested cases involving: (1) property of a value of up $100,000; (2) any property the importation of which is prohibited (as under current law); and (3) any conveyances used to transport illicit drugs.

SECTION 402

Section 402 amends 19 U.S.C. 1608 to increase the amount of bond which is to be filed by a party wishing to contest the forfeiture of property subject to the provisions of 19 U.S.C. 1607 (*i.e.*, property valued at $100,000 or less, or conveyances of illicit drugs) in a judicial proceeding. Under current law, this bond is set at $250, an amount so low that it neither acts to discourage the filing of clearly frivolous suits nor reflects the substantial costs to the government in pursuing a judicial forfeiture.[58] As amended by sec-

[58] The current $250 bond amount dates from 1844 when the limit on the value of property subject to administrative forfeiture was only $100.

tion 402, the bond would be set at the lesser of $5,000 or 10 percent of the value of the property, but in no event less than $250. This increased bond is also a reflection of the fact that in light of section 401's amendment to 19 U.S.C. 1607, the bond provision will apply to cases involving property of significantly greater value than under present law. Of course, the bond requirement is subject to the established authority of the courts to reduce or dispense with a required bond where a claimant is unable to post it.

SECTION 403

Section 403 amends 19 U.S.C. 1609 to provide for the deposit of the proceeds of the sale of property forfeited under the customs law into the Customs Forfeiture Fund established in section 407.

SECTION 404

Section 404 amends 19 U.S.C. 1610 to conform to the amendments discussed above regarding 19 U.S.C. 1607. As under current law, section 1610 requires a judicial forfeiture for all property not governed by the procedures set out in sections 1607 through 1609 of title 19, United States Code. Thus, if the value of the property seized exceeds the limits described in 19 U.S.C. 1607, as amended in section 401 of the bill, a judicial forfeiture is required regardless of whether the forfeiture is contested.

SECTION 405

Section 405 sets forth an amendment to 19 U.S.C. 1612, which permits, in certain circumstances, the summary sale of a wasting asset, to conform with the amendment to 19 U.S.C. 1607, discussed above in relation to section 401 to the bill.

SECTION 406

Section 406 sets forth conforming amendments to 19 U.S.C. 1613 to provide for the deposit of customs forfeiture proceeds into the Customs Forfeiture Fund established in section 407 of the bill.

SECTION 407

Section 407 amends the Tariff Act by creating a new section that will provide for the deposit of the proceeds of forfeitures under the customs laws into a Customs Forfeiture Fund which is to be available for the payment of expenses associated with forfeiture actions. It parallels the Drug Assets Forfeiture Fund established in section 302.[59]

SECTION 408

Section 408 creates a new section 616 of the Tariff Act (19 U.S.C. 1616) to govern certain dispositions of forfeited property. Subsection (a) of this new section permits the transfer of forfeited proper-

[59] The Drug Assets Fund may be used, in addition to paying expenses and rewards, for payment of liens and payments associated with remission and mitigation, when appropriate. The Custom Forfeiture Fund does not include these additional purposes, but the Customs Service retains its existing authority to make such payments out of sale proceeds under 19 U.S.C. 1613.

ty to another Federal agency, or to a State or local agency which participated in the case which led to the forfeiture. Subsection (b) provides for the discontinuance of a Federal forfeiture action in favor of State or local forfeiture proceedings. Subsection (c) makes clear the authority of the United States to transfer the seized property directly to State or local authorities where a forfeiture action is discontinued under subsection (b), and subsection (d) provides for notice to be given to all interested parties to advise them of such a discontinuance of Federal proceedings.

SECTION 409

Section 409 amends 19 U.S.C. 1619 to increase from $50,000 to $150,000 the maximum amount of a reward that may be paid for information leading to a forfeiture. As under current law, however, the amount of such an award may not exceed one-fourth of the amount realized by the United States from the forfeiture.

SECTION 410

Section 410 adds a new section 589 to the Tariff Act which describes the law enforcement authorities of customs officers. In particular, this new provision will cure certain gaps in the current arrest authority of customs officers. Statutory arrest authority of customs officers is now confined to violations involving a limited number of statutes.[60] Customs officers making arrests for export violations, assaults on customs officers, and other Federal felony violations must rely on various State laws conferring arrest authority on private persons ("citizen's arrest" authority) unless State law confers peace officer status on them.[61] This reliance on fifty different State laws is confusing and inconsistent with the authority conferred upon other Federal officers. In other instances where customs officers have been charged with the responsibility of protecting Federal property and employees, it has been necessary that they be sworn in as deputy United States Marshals to assure that they have adequate law enforcement powers.[62] This procedure has proven to be inefficient, cumbersome, and inadequate.

The new section of the Tariff Act added by section 410 of the bill would authorize customs officers to make an arrest without a warrant for any offense against the United States committed in the officer's presence or for any Federal felony committed outside the officer's presence if the officer has reasonable grounds to believe the person to be arrested has committed or is committing the felony. In addition, this new provision carries forward the existing authority set out in section 7607 of the Internal Revenue Code [63] for customs

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[60] A customs officer has authority to arrest without a warrant for violations of the narcotic drug and marihuana laws under section 7607 of the Internal Revenue Code, for violations of the navigation laws if committed in the officer's presence, and for violations of revenue laws under 19 U.S.C. 1581.

[61] *United States* v. *Swarovski*, 557 F.2d 40 (2d Cir. 1977); *United States* v. *Heliczer*, 373 F.2d 241 (2d Cir. 1967), *cert. denied*, 388 U.S. 1917 (1967).

[62] This occurred, for example, in the case of the Federal air security program and the "Cuban Freedom Flotilla" program.

[63] This provision of the Internal Revenue Code is repealed in subsection (b) of section 410 of the bill.

officers to carry firearms, execute and serve arrest and search warrants, subpoenas, summons, and court orders.

SECTION 411

Section 411 amends several sections of the Tariff Act to provide that the seizure and forfeiture of aircraft is treated in the same manner as the seizure and forfeiture of other conveyances. Other amendments to the Tariff Act in preceding sections of title IV provided for the same change.

SECTION 412

Section 412 amends 19 U.S.C. 1644 to correct an outdated reference to 49 U.S.C. 177 by substituting a reference to the currently applicable provision of the Federal Aviation Act.

SECTION 413

Section 413 adds a new section 600 to the Tariff Act to make it clear that all seizures effected by customs officers are to be governed by sections 602 through 609 of the Tariff Act unless other procedures for seizure are provided.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., September 7, 1983.

Hon. STROM THURMOND,
Chairman, Committee on the Judiciary, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed S. 948, the Comprehensive Forfeiture Act of 1983, as reported by the Senate Committee on the Judiciary, August 4, 1983.

The bill is designed to make it easier for the Federal Government to require the forfeiture of property utilized in or obtained through racketeering and major drug-related crimes. Part A retains the current fines and criminal penalties of the Racketeer Influenced and Corrupt Organization Act (RICO), but expands the criminal forfeiture provisions of the act to cover a wider range of property. Part B amends the Drug Abuse Prevention Act of 1970 to allow for the increased use of criminal forfeiture in drug related offenses. Criminal forfeiture proceedings may be consolidated with a trial for a criminal offense, thereby reducing the number of prosecutions required. Part C establishes a four-year trial program under which the proceeds from the forfeiture of drug profits and drug-related assets are to be placed in a Drug Assets Forfeiture Fund. The bill also authorizes appropriations from the fund of not more than $10 million in 1984, $15 million in 1985, $20 million in 1986, and $20 million in 1987 to be used for offsetting the cost of processing forfeitures. Any proceeds in excess of these amounts are to be deposited in the general fund of the United States Treasury. The fund will cease to exist in fiscal year 1988, and all assets contained in the fund will revert to the Treasury. Part D creates a

Customs Forfeiture Fund. The provisions governing this fund are virtually identical to those governing the Drug Assets Forfeiture Fund (including the authorization of appropriations), although the proceeds are to be used to offset the cost to the Customs Service of processing forfeitures.

CBO has no basis for estimating the increased proceeds resulting from enactment of this bill, since the amount of money associated with criminal activities covered by these forfeiture provisions is unknown and because the success of government investigations and prosecutions is impossible to predict. Information provided by the Justice Department indicates that the total increase in forfeiture proceeds could be on the order of tens of millions of dollars. It is also impossible to estimate any change in the costs of processing forfeited property, since these costs depend on the type and amount of property seized. The establishment of the two special forfeiture funds is not expected to have any net effect on the Federal budget.

Enactment of this bill is not expected to affect the budgets of State and local governments.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

RUDOLPH G. PENNER, *Director.*

REGULATORY IMPACT STATEMENT

In compliance with paragraph 11(b), rule XXVI of the Standing Rules of the Senate, it is hereby stated that the Committee anticipates that the bill will have no additional direct regulatory impact. After due consideration, the Committee concluded that the changes in existing law contained in the bill will not increase or diminish any present regulatory responsibilities of the United States Department of Justice or any other department or agency affected by the legislation.

ACTION BY THE COMMITTEE

On July 26, 1983, the Committee on the Judiciary considered and discussed S. 948, the Comprehensive Forfeiture Act of 1983. An amendment, in the nature of a substitute, was considered as indicated below. On July 26, 1983, by voice vote, the Committee ordered the amended bill reported out with recommendation that it be passed by the Senate.

The following amendment was adopted by voice vote:

1. Biden Amendment to conform this bill to title III of the Comprehensive Crime Control Act of 1983, as reported by the Committee July 21, 1983.

CHANGES IN EXISTING LAW

In compliance with subsection (12) of rule XXVI of the Standing Rules of the Senate, changes in existing law made by S. 948 are as follows: Existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman.

UNITED STATES CODE

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TITLE 18: CRIMES AND CRIMINAL PROCEDURE

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PART I—CRIMES

Chapter: Sec.

* * * * * * *

95. Racketeering 1951
96. Racketeer influenced and corrupt organizations 1961
97. Railroads 1991

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CHAPTER 96—RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS

Sec.
1961. Definitions.
1962. Prohibited racketeering activities.[1]
1963. Criminal penalties.
1964. Civil remedies.
1965. Venue and process.
1966. Expedition of actions.
1967. Evidence.
1968. Civil investigative demand.

[1] Analysis does not conform to section catchline.

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[§ 1963. Criminal penalties

[(a) Whoever violates any provision of section 1962 of this chapter shall be fined not more than $25,000 or imprisoned not more than twenty years, or both, and shall forfeit to the United States (1) any interest he has acquired or maintained in violation of section 1962, and (2) any interest in, security of, claim against, or property or contractual right of any kind affording a source of influence over, any enterprise which he has established, operated, controlled, conducted, or participated in the conduct of, in violation of section 1962.

[(b) In any action brought by the United States under this section, the district courts of the United States shall have jurisdiction to enter such restraining orders or prohibitions, or to take such other actions, including, but not limited to, the acceptance of satisfactory performance bonds, in connection with any property or other interest subject to forfeiture under this section, as it shall deem proper.

[(c) Upon conviction of a person under this section, the court shall authorize the Attorney General to seize all property or other interest declared forfeited under this section upon such terms and

conditions as the court shall deem proper. If a property right or other interest is not exercisable or transferable for value by the United States, it shall expire, and shall not revert to the convicted person. All provisions of law relating to the disposition of property, or the proceeds from the sale thereof, or the remission or mitigation of forfeitures for violation of the customs laws, and the compromise of claims and the award of compensation to informers in respect to such forfeitures shall apply to forfeitures incurred, or alleged to have been incurred, under the provisions of this section, insofar as applicable and not inconsistent with the provisions hereof. Such duties as are imposed upon the collector of customs or any other person with respect to the disposition of property under the customs laws shall be performed under this chapter by the Attorney General. The United States shall dispose of all such property as soon as commercially feasible, making due provision for the rights of innocent persons.]

§ 1963. Criminal penalties

(a) Whoever violates any provision of section 1962 of this chapter shall be fined not more than $25,000 or imprisoned not more than twenty years, or both, and shall forfeit to the United States, irrespective of any provision of State law—

(1) any interest the person has acquired or maintained in violation of section 1962;

(2) any—

(A) interest in;

(B) security of;

(C) claim against; or

(D) property or contractual right of any kind affording a source of influence over;

any enterprise which the person has established, operated, controlled, conducted, or participated in the conduct of, in violation of section 1962; and

(3) any property constituting, or derived from, any proceeds which the person obtained, directly or indirectly, from racketeering activity or unlawful debt collection in violation of section 1962.

The court, in imposing sentence on such person shall order, in addition to any other sentence imposed pursuant to this section, that the person forfeit to the United States all property described in this subsection.

(b) Property subject to criminal forfeiture under this section includes—

(1) real property, including things growing on, affixed to, and found in land; and

(2) tangible and intangible personal property, including rights, privileges, interests, claims, and securities.

(c) All right, title, and interest in property described in subsection (a) vests in the United States upon the commission of the act giving rise to forfeiture under this section. Any such property that is subsequently transferred to a person other than the defendant may be the subject of a special verdict of forfeiture and thereafter shall be ordered forfeited to the United States, unless the transferee establishes in a hearing pursuant to subsection (m) that he is a bona fide pur-

chaser for value of such property who at the time of purchase was reasonably without cause to believe that the property was subject to forfeiture under this section.

(d) If any of the property described in subsection (a)—

(1) cannot be located;

(2) has been transferred to, sold to, or deposited with, a third party;

(3) has been placed beyond the jurisdiction of the court;

(4) has been substantially diminished in value by any act or omission of the defendant; or

(5) has been commingled with other property which cannot be divided without difficulty;

the court shall order the forfeiture of any other property of the defendant up to the value of any property described in paragraphs (1) through (5).

(e)(1) Upon application of the United States, the court may enter a restraining order or injunction, require the execution of a satisfactory performance bond, or take any other action to preserve the availability of property described in subsection (a) for forfeiture under this section—

(A) upon the filing of an indictment or information charging a violation of section 1962 of this chapter and alleging that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section; or

(B) prior to the filing of such an indictment or information, if, after notice to persons appearing to have an interest in the property and opportunity for a hearing, the court determines that—

(i) there is a substantial probability that the United States will prevail on the issue of forfeiture and that failure to enter the order will result in the property being destroyed, removed from the jurisdiction of the court, or otherwise made unavailable for forfeiture; and

(ii) the need to preserve the availability of the property through the entry of the requested order outweighs the hardship on any party against whom the order is to be entered:

Provided, however, That an order entered pursuant to subparagraph (B) shall be effective for not more than ninety days, unless extended by the court for good cause shown or unless an indictment or information described in subparagraph (A) has been filed.

(2) A temporary restraining order under this subsection may be entered upon application of the United States without notice or opportunity for a hearing when an information or indictment has not yet been filed with respect to the property, if the United States demonstrates that there is probable cause to believe that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section and that provision of notice will jeopardize the availability of the property for forfeiture. Such a temporary order shall expire not more than ten days after the date on which it is entered, unless extended for good cause shown or unless the party against whom it is entered consents to an extension for a longer period. A hearing requested concerning an

order entered under this paragraph shall be held at the earliest possible time, and prior to the expiration of the temporary order.

(3) The court may receive and consider, at a hearing held pursuant to this subsection, evidence and information that would be inadmissible under the Federal Rules of Evidence.

(f) Upon conviction of a person under this section, the court shall enter a judgment of forfeiture of the property to the United States and shall also authorize the Attorney General to seize all property ordered forfeited upon such terms and conditions as the court shall deem proper. Following the entry of an order declaring the property forfeited, the court may, upon application of the United States, enter such appropriate restraining orders or injunctions, require the execution of satisfactory performance bonds, appoint receivers, conservators, appraisers, accountants, or trustees, or take any other action to protect the interest of the United States in the property ordered forfeited. Any income accruing to, or derived from, an enterprise or an interest in an enterprise which has been ordered forfeited under this section may be used to offset ordinary and necessary expenses to the enterprise which are required by law, or which are necessary to protect the interests of the United States or third parties.

(g) Following the seizure of property ordered forfeited under this section, the Attorney General shall direct the disposition of the property by sale or any other commercially feasible means, making due provision for the rights of any innocent persons. Any property right or interest not exercisable by, or transferable for value to, the United States shall expire and shall not revert to the defendant, nor shall the defendant or any person acting in concert with or on behalf of the defendant be eligible to purchase forfeited property at any sale held by the United States. Upon application of a person, other than the defendant or a person acting in concert with or on behalf of the defendant, the court may restrain or stay the sale or disposition of the property pending the conclusion of any appeal of the criminal case giving rise to the forfeiture, if the applicant demonstrates that proceeding with the sale or disposition of the property will result in irreparable injury, harm or loss to him. Notwithstanding 31 U.S.C. 3302(b), the proceeds of any sale or other disposition of property forfeited under this section and any moneys forfeited shall be used to pay all proper expenses for the forfeiture and the sale, including expenses of seizure, maintenance and custody of the property pending its disposition, advertising and court costs. The Attorney General shall deposit in the Treasury any amounts of such proceeds or moneys remaining after the payment of such expenses.

(h) With respect to property ordered forfeited under this section, the Attorney General is authorized to—

(1) grant petitions for mitigation or remission of forfeiture, restore forfeited property to victims of a violation of this chapter, or take any other action to protect the rights of innocent persons which is in the interest of justice and which is not inconsistent with the provisions of this chapter;

(2) compromise claims arising under this section;

(3) award compensation to persons providing information resulting in a forfeiture under this section;

(4) direct the disposition by the United States of all property ordered forfeited under this section by public sale or any other commercially feasible means, making due provision for the rights of innocent persons; and

(5) take appropriate measures necessary to safeguard and maintain property ordered forfeited under this section pending its disposition.

(i) The Attorney General may promulgate regulations with respect to—

(1) making reasonable efforts to provide notice to persons who may have an interest in property ordered forfeited under this section;

(2) granting petitions for remission or mitigation of forfeiture;

(3) the restitution of property to victims of an offense petitioning for remission or mitigation of forfeiture under this chapter;

(4) the disposition by the United States of forfeited property by public sale or other commercially feasible means;

(5) the maintenance and safekeeping of any property forfeited under this section pending its disposition; and

(6) the compromise of claims arising under this chapter.

Pending the promulgation of such regulations, all provisions of law relating to the disposition of property, or the proceeds from the sale thereof, or the remission or mitigation of forfeitures for violation of the customs laws, and the compromise of claims and the award of compensation to informers in respect of such forfeitures shall apply to forfeitures incurred, or alleged to have been incurred, under the provisions of this section, insofar as applicable and not inconsistent with the provisions hereof. Such duties as are imposed upon the Customs Service or any person with respect to the disposition of property under the customs law shall be performed under this chapter by the Attorney General.

(j) Except as provided in subsection (m), no party claiming an interest in property subject to forfeiture under this section may—

(1) intervene in a trial or appeal of a criminal case involving the forfeiture of such property under this section; or

(2) commence an action at law or equity against the United States concerning the validity of his alleged interest in the property subsequent to the filing of an indictment or information alleging that the property is subject to forfeiture under this section.

(k) The district courts of the United States shall have jurisdiction to enter orders as provided in this section without regard to the location of any property which may be subject to forfeiture under this section or which has been ordered forfeited under this section.

(l) In order to facilitate the identification or location of property declared forfeited and to facilitate the disposition of petitions for remission or mitigation of forfeiture, after the entry of an order declaring property forfeited to the United States the court may, upon application of the United States, order that the testimony of any witness relating to the property forfeited be taken by deposition and that any designated book, paper, document, record, recording, or other material not privileged be produced at the same time and place, in the same manner as provided for the taking of depositions under Rule 15 of the Federal Rules of Criminal Procedure.

(m)(1) Following the entry of an order of forfeiture under this section, the United States shall publish notice of the order and of its intent to dispose of the property for at least seven successive court days in such manner as the Attorney General may direct. The Government may also, to the extent practicable, provide direct written notice to any person known to have alleged an interest in the property that is the subject of the order of forfeiture as a substitute for published notice as to those persons so notified.

(2) Any person, other than the defendant, asserting a legal interest in property which has been ordered forfeited to the United States pursuant to this section may, within thirty days of the final publication of notice or his receipt of notice under paragraph (1), whichever is earlier, petition the court for a hearing to adjudicate the validity of his alleged interest in the property. The hearing shall be held before the court alone, without a jury.

(3) The petition shall be signed by the petitioner under penalty of perjury and shall set forth the nature and extent of the petitioner's right, title, or interest in the property, the time and circumstances of the petitioner's acquisition of the right, title, or interest in the property, any additional facts supporting the petitioner's claim, and the relief sought.

(4) The hearing on the petition shall, to the extent practicable and consistent with the interests of justice, be held within thirty days of the filing of the petition. The court may consolidate the hearing on the petition with a hearing on any other petition filed by a person other than the defendant under this subsection.

(5) At the hearing, the petitioner may testify and present evidence and witnesses on his own behalf, and cross-examine witnesses who appear at the hearing. The United States may present evidence and witnesses in rebuttal and in defense of its claim to the property and cross-examine witnesses who appear at the hearing. In addition to testimony and evidence presented at the hearing, the court shall consider the relevant portions of the record of the criminal case which resulted in the order of forfeiture.

(6) If, after the hearing, the court determines that the petitioner has established by a preponderance of the evidence that—

(A) the petitioner has a legal right, title, or interest in the property, and such right, title, or interest renders the order of forfeiture invalid in whole or in part because the right, title, or interest was vested in the petitioner rather than the defendant or was superior to any right, title, or interest of the defendant at the time of the commission of the acts which gave rise to the forfeiture of the property under this section; or

(B) the petitioner is a bona fide purchaser for value of the right, title, or interest in the property and was at the time of purchase reasonably without cause to believe that the property was subject to forfeiture under this section;

the court shall amend the order of forfeiture in accordance with its determination.

(7) Following the court's disposition of all petitions filed under this subsection, or if no such petitions are filed following the expiration of the period provided in paragraph (2) for the filing of such petitions, the United States shall have clear title to property that is

the subject of the order of forfeiture and may warrant good title to any subsequent purchaser or transferee.

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COMPREHENSIVE DRUG ABUSE PREVENTION AND CONTROL ACT OF 1970

PUBLIC LAW 91-513; 84 STAT. 1236

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TITLE II—CONTROL AND ENFORCEMENT

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PART C—REGISTRATION OF MANUFACTUERS, DISTRIBUTORS, AND DISPENSERS OF CONTROLLED SUBSTANCES

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DENIAL, REVOCATION, OR SUSPENSION OF REGISTRATION

Sec. 304. (a) A registration pursuant to section 303 to manufacture, distribute, or dispense a controlled substance may be suspended or revoked by the Attorney General upon a finding that the registrant—

* * * * * * *

(f) In the event the Attorney General suspends or revokes a registration granted under section 303, all controlled substances owned or possessed by the registrant pursuant to such registration at the time of suspension or the effective date of the revocation order, as the case may be, may, in the discretion of the Attorney General, be placed under seal. No disposition may be made of any controlled substances under seal until the time for taking an appeal has elapsed or until all appeals have been concluded except that a court, upon application therefor, may at any time order the sale of perishable controlled substances. Any such order shall require the deposit of the proceeds of the sale with the court. Upon a revocation order becoming final, all such controlled substances (or proceeds of sale deposited in court) shall be forfeited to the United States; and the Attorney General shall dispose of such controlled substances in accordance with section 511(e). *All right, title, and interest in such controlled substances shall vest in the United States upon a revocation order becoming final.*

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PART D—OFFENSES AND PENALTIES

PROHIBITED ACTS A—PENALTIES

Sec. 401. (a) Except as authorized by this title, it shall be unlawful for any person knowingly or intentionally—

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CONTINUING CRIMINAL ENTERPRISE

Sec. 408. (a) [(1)] Any person who engages in a continuing criminal enterprise shall be sentenced to a term of imprisonment which may not be less than 10 years and which may be up to life imprisonment, to a fine of not more than $100,000, and to the forfeiture prescribed in [paragraph (2)] *section 413 of this title*; except that if any person engages in such activity after one or more prior convictions of him under this section have become final, he shall be sentenced to a term of imprisonment which may not be less than 20 years and which may be up to life imprisonment, to a fine of not more than $200,000, and to the forfeiture prescribed in [paragraph (2)] *section 413 of this title.*

[(2) Any person who is convicted under paragraph (1) of engaging in a continuing criminal enterprise shall forfeit to the United States—

[(A) the profits obtained by him in such enterprise, and

[(B) any of his interest in, claim against, or property or contractual rights of any kind affording a source of influence over, such enterprise.]

* * * * * * *

[(d) The district courts of the United States (including courts in the territories or possessions of the United States having jurisdiction under subsection (a)) shall have jurisdiction to enter such restraining orders or prohibitions, or to take such other actions, including the acceptance of satisfactory performance bonds, in connection with any property or other interest subject to forfeiture under this section, as they shall deem proper.]

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CRIMINAL FORFEITURES

PROPERTY SUBJECT TO CRIMINAL FORFEITURE

SEC. 413. (a) Any person convicted of a violation of this title or title III punishable by imprisonment for more than one year shall forfeit to the United States, irrespective of any provision of State law—

(1) any property constituting, or derived from, any proceeds the person obtained, directly or indirectly, as the result of such violation;

(2) any of the person's property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, such violation; and

(3) in the case of a person convicted of engaging in a continuing criminal enterprise in violation of section 408 of this title (21 U.S.C. 848), the person shall forfeit, in addition to any property described in paragraph (1) or (2), any of his interest in, claims against, and property or contractual rights affording a source of control over, the continuing criminal enterprise.

The court, in imposing sentence on such person, shall order, in addition to any other sentence imposed pursuant to this title or title III, that the person forfeit to the United States all property described in this subsection.

MEANING OF TERM "PROPERTY"

(b) Property subject to criminal forfeiture under this section includes—

(1) real property, including things growing on, affixed to, and found in land; and

(2) tangible and intangible personal property, including rights, privileges, interests, claims, and securities.

THIRD PARTY TRANSFERS

(c) All right, title, and interest in property described in subsection (a) vests in the United States upon the commission of the act giving rise to forfeiture under this section. Any such property that is subsequently transferred to a person other than the defendant may be the subject of a special verdict of forfeiture and thereafter shall be or-

dered forfeited to the United States, unless the transferee establishes in a hearing pursuant to subsection (o) that he is a bona fide purchaser for value of such property who at the time of purchase was reasonably without cause to believe that the property was subject to forefeiture under this section.

(d) If any of the property described in subsection (a)—

(1) cannot be located;

(2) has been transferred to, sold to, or deposited with a third party;

(3) has been placed beyond the jurisdiction of the court;

(4) has been substantially diminished in value by any act or omission of the defendant; or

(5) has been commingled with other property which cannot be divided without difficulty;

the court shall order the forfeiture of any other property of the defendant up to the value of any property described in paragraphs (1) through (5).

REBUTTABLE PRESUMPTION

(e) There is a rebuttable presumption at trial that any property of a person convicted of a felony under this title or title III is subject to forfeiture under this section if the United States establishes by a preponderance of the evidence that—

(1) such property was acquired by such person during the period of the violation of this title or title III or within a reasonable time after such period; and

(2) there was no likely source for such property other than the violation of this title or title III.

PROTECTIVE ORDERS

(f)(1) Upon application of the United States, the court may enter a restraining order or injunction, require the execution of a satisfactory performance bond, or take any other action to preserve the availability of property described in subsection (a) for forfeiture under this section—

(A) upon the filing of an indictment or information charging a violation of this title or title III for which criminal forfeiture may be ordered under this section and alleging that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section; or

(B) prior to the filing of such an indictment or information, if, after notice to persons appearing to have an interest in the property and opportunity for a hearing, the court determines that—

(i) there is a substantial probability that the United States will prevail on the issue of forfeiture and that failure to enter the order will result in the property being destroyed, removed from the jurisdiction of the court, or otherwise made unavailable for forfeiture; and

(ii) the need to preserve the availability of the property through the entry of the requested order outweighs the hardship on any party against whom the order is to be entered:

Provided, however, That an order entered pursuant to subparagraph (B) shall be effective for not more than ninety days, unless extended by the court for good cause shown or unless an indictment or information described in subparagraph (A) has been filed.

(2) A temporary restraining order under this subsection may be entered upon application of the United States without notice or opportunity for a hearing when an information or indictment has not yet been filed with respect to the property, if the United States demonstrates that there is probable cause to believe that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section and that provision of notice will jeopardize the availability of the property for forfeiture. Such a temporary order shall expire not more than ten days after the date on which it is entered, unless extended for good cause shown or unless the party against whom it is entered consents to an extension for a longer period. A hearing requested concerning an order entered under this paragraph shall be held at the earliest possible time and prior to the expiration of the temporary order.

(3) The court may receive and consider, at a hearing held pursuant to this subsection, evidence and information that would be inadmissible under the Federal Rules of Evidence.

WARRANT OF SEIZURE

(g) The Government may request the issuance of a warrant authorizing the seizure of property subject to forfeiture under this section in the same manner as provided for a search warrant. If the court determines that there is probable cause to believe that the property to be seized would, in the event of conviction, be subject to forfeiture and that an order under subsection (f) may not be sufficient to assure the availability of the property for forfeiture, the court shall issue a warrant authorizing the seizure of such property.

EXECUTION

(h) Upon entry of an order of forfeiture under this section, the court shall authorize the Attorney General to seize all property ordered forfeited upon such terms and conditions as the court shall deem proper. Following entry of an order declaring the property forfeited, the court may, upon application of the United States, enter such appropriate restraining orders or injunctions, require the execution of satisfactory performance bonds, appoint receivers, conservators, appraisers, accountants, or trustees, or take any other action to protect the interest of the United States in the property ordered forfeited. Any income accruing to or derived from property ordered forfeited under this section may be used to offset ordinary and necessary expenses to the property which are required by law, or which are necessary to protect the interests of the United States or third parties.

DISPOSITION OF PROPERTY

(i) Following the seizure of property ordered forfeited under this section, the Attorney General shall direct the disposition of the property by sale or any other commercially feasible means, making

due provision for the rights of any innocent persons. Any property right or interest not exercisable by, or transferable for value to, the United States shall expire and shall not revert to the defendant, nor shall the defendant or any person acting in concert with him or on his behalf be eligible to purchase forfeited property at any sale held by the United States. Upon application of a person, other than the defendant or a person acting in concert with him or on his behalf, the court may restrain or stay the sale or disposition of the property pending the conclusion of any appeal of the criminal case giving rise to the forfeiture, if the applicant demonstrates that proceeding with the sale or disposition of the property will result in irreparable injury, harm, or loss to him.

AUTHORITY OF THE ATTORNEY GENERAL

(j) With respect to property ordered forfeited under this section, the Attorney General is authorized to—

(1) grant petitions for mitigation or remission of forfeiture, restore forfeited property to victims of a violation of this chapter, or take any other action to protect the rights of innocent persons which is in the interest of justice and which is not inconsistent with the provisions of this section;

(2) compromise claims arising under this section;

(3) award compensation to persons providing information resulting in a forfeiture under this section;

(4) direct the disposition by the United States, in accordance with the provisions of section 511(e) of this title (21 U.S.C. 881(e)), of all property ordered forfeited under this section by public sale or any other commercially feasible means, making due provision for the rights of innocent persons; and

(5) take appropriate measures necessary to safeguard and maintain property ordered forfeited under this section pending its disposition.

APPLICABILITY OF CIVIL FORFEITURE PROVISIONS

(k) Except to the extent that they are inconsistent with the provisions of this section, the provisions of section 511(d) of this title (21 U.S.C. 881(d)) shall apply to a criminal forfeiture under this section.

BAR ON INTERVENTION

(l) Except as provided in subsection (o), no party claiming an interest in property subject to forfeiture under this section may—

(1) intervene in a trial or appeal of a criminal case involving the forfeiture of such property under this section; or

(2) commence an action at law or equity against the United States concerning the validity of his alleged interest in the property subsequent to the filing of an indictment or information alleging that the property is subject to forfeiture under this section.

JURISDICTION TO ENTER ORDERS

(m) The district courts of the United States shall have jurisdiction to enter orders as provided in this section without regard to the

location of any property which may be subject to forfeiture under this section or which has been ordered forfeited under this section.

DEPOSITIONS

(n) In order to facilitate the identification and location of property declared forfeited and to facilitate the disposition of petitions for remission or mitigation of forfeiture, after the entry of an order declaring property forfeited to the United States, the court may, upon application of the United States, order that the testimony of any witness relating to the property forfeited be taken by deposition and that any designated book, paper, document, record, recording, or other material not privileged be produced at the same time and place, in the same manner as provided for the taking of depositions under Rule 15 of the Federal Rules of Criminal Procedure.

THIRD PARTY INTERESTS

(o)(1) Following the entry of an order of forfeiture under this section, the United States shall publish notice of the order and of its intent to dispose of the property for at least seven successive court days in such manner as the Attorney General may direct. The Government may also, to the extent practicable, provide direct written notice to any person known to have alleged an interest in the property that is the subject of the order of forfeiture as a substitute for published notice as to those persons so notified.

(2) Any person, other than the defendant, asserting a legal interest in property which has been ordered forfeited to the United States pursuant to this section may, within thirty days of the final publication of notice or his receipt of notice under paragraph (1), whichever is earlier, petition the court for a hearing to adjudicate the validity of his alleged interest in the property. The hearing shall be held before the court alone, without a jury.

(3) The petition shall be signed by the petitioner under penalty of perjury and shall set forth the nature and extent of the petitioner's right, title, or interest in the property, the time and circumstances of the petitioner's acquisition of the right, title, or interest in the property, any additional facts supporting the petitioner's claim, and the relief sought.

(4) The hearing on the petition shall, to the extent practicable and consistent with the interests of justice, be held within thirty days of the filing of the petition. The court may consolidate the hearing on the petition with a hearing on any other petition filed by a person other than the defendant under this subsection.

(5) At the hearing, the petitioner may testify and present evidence and witnesses on his own behalf, and cross-examine witnesses who appear at the hearing. The United States may present evidence and witnesses in rebuttal and in defense of its claim to the property and cross-examine witnesses who appear at the hearing. In addition to testimony and evidence presented at the hearing, the court shall consider the relevant portions of the record of the criminal case which resulted in the order of forfeiture.

(6) If, after the hearing, the court determines that the petitioner has established by a preponderance of the evidence that—

(A) the petitioner has a legal right, title, or interest in the property, and such right, title, or interest renders the order of forfeiture invalid in whole or in part because the right, title, or interest was vested in the petitioner rather than the defendant or was superior to any right, title, or interest of the defendant at the time of the commission of the acts which gave rise to the forfeiture of the property under this section; or

(B) the petitioner is a bona fide purchaser for value of the right, title, or interest in the property and was at the time of purchase reasonably without cause to believe that the property was subject to forfeiture under this section;

the court shall amend the order of forfeiture in accordance with its determination.

(7) Following the court's disposition of all petitions filed under this subsection, or if no such petitions are filed following the expiration of the period provided in paragraph (2) for the filing of such petitions, the United States shall have clear title to property that is the subject of the order of forfeiture and may warrant good title to any subsequent purchaser or transferee.

PART E—ADMINISTRATIVE AND ENFORCEMENT PROVISIONS

PROCEDURES

Sec. 501. (a) The Attorney General may delegate any of his functions under this title to any officer or employee of the Department of Justice.

* * * * * * *

FORFEITURES

Sec. 511. (a) The following shall be subject to forfeiture to the United States and no property right shall exist in them:

(1) All controlled substances which have been manufactured, distributed, dispensed, or acquired in violation of this title.

* * * * * * *

(7) All real property, including any right, title, and interest in the whole of any lot or tract of land and any appurtenances or improvements, which is used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, a violation of this title punishable by more than one year's imprisonment, except that no property shall be forfeited under this paragraph, to the extent of an interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner.

(b) Any property subject to *civil or criminal* forfeiture to the United States under this title may be seized by the Attorney General upon process issued pursuant to the Supplemental Rules for Certain Admiralty and Maritime Claims by any district court of

the United States having jurisdiction over the property, except that seizure without such process may be made when—

* * * * * * *

(4) the Attorney General has probable cause to believe that the property [has been used or is intended to be used in violation of] *is subject to civil or criminal forfeiture under* this title.

* * * * * * *

(c) Property taken or detained under this section shall not be repleviable, but shall be deemed to be in the custody of the Attorney General, subject only to the orders and decrees of the court or the official having jurisdiction thereof. Whenever property is seized under *any of* the provisions of this title, the Attorney General may—

(1) place the property under seal;

(2) remove the property to a place designated by him; or

(3) require that the General Services Administration take custody of the property and remove it, *if practicable,* to an appropriate location for disposition in accordance with law.

(d) All provisions of law relating to the seizure, summary and judicial forfeiture, and condemnation of property for violation of the customs laws; the disposition of such property or the proceeds from the sale thereof; the remission or mitigation of such forfeitures; and the compromise of claims and the award of compensation to informers in respect of such forfeitures shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under *any of* the provisions of this title, insofar as applicable and not inconsistent with the provisions hereof; except that such duties as are imposed upon the customs officer or any other person with respect to the seizure and forfeiture of property under the customs laws shall be performed with respect to seizures and forfeitures of property under this title by such officers, agents, or other persons as may be authorized or designated for that purpose by the Attorney General, except to the extent that such duties arise from seizures and forfeitures effected by any customs officer.

(e) Whenever property is *civilly or criminally* forfeited under this title the Attorney General may—

(1) retain the property for official use *or transfer the custody or ownership of any forfeited property to any Federal, State, or local agency pursuant to section 616 of the Tariff Act of 1930 (19 U.S.C. 1616);*

(2) sell any forfeited property which is not required to be destroyed by law and which is not harmful to the public;

(3) require that the General Services Administration take custody of the property [and remove it for disposition] *and dispose of it* in accordance with law; or

(4) forward it to the Drug Enforcement Administration for disposition (including delivery for medical or scientific use to any Federal or State agency under regulations of the Attorney General).

The proceeds from any sale under paragraph (2) and any moneys forfeited under this subchapter shall be used to pay all proper expenses of the proceedings for forfeiture and sale including expenses

of seizure, maintenance of custody, advertising, and court costs. The Attorney General shall forward to the Treasury of the United States for deposit in [the general fund of the United States Treasury] *accordance with subsection (j) of this section* any amounts of such moneys and proceeds remaining after payment of such expenses.

* * * * * * *

(g)(1) All species of plants from which controlled substances in schedules I and II may be derived which have been planted or cultivated in violation of this title, or of which the owners or cultivators are unknown, or which are wild growths, may be seized and summarily forfeited to the United States.

* * * * * * *

(h) All right, title, and interest in property described in subsection (a) shall vest in the United States upon commission of the act giving rise to forfeiture under this section.

(i) The filing of an indictment or information alleging a violation of this title or title III which is also related to a civil forfeiture proceeding under this section shall, upon motion of the United States and for good cause shown, stay the civil forfeiture proceeding.

(j)(1) There is established in the United States Treasury a special fund to be known as the Drug Assets Forfeiture Fund (hereinafter in this subsection referred to as the "fund") which shall be available to the Attorney General without fiscal year limitation in such amounts as may be specified in appropriation Acts for the following purposes of the Department of Justice:

(A) the payment, at the discretion of the Attorney General, of any expenses necessary to seize, detain, inventory, safeguard, maintain, advertise, or sell property under seizure, detention, or forfeited pursuant to this Act or the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or of any other necessary expenses incident to the seizure, detention, or forfeiture of such property: such payments may include payments for contract services and payments to reimburse any Federal, State, or local agency for any expenditures made to perform the foregoing functions;

(B) the payment of awards for information or assistance leading to a civil or criminal forfeiture under this Act, or the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), at the discretion of the Attorney General;

(C) the compromise and payment of valid liens and mortgages against property that has been forfeited pursuant to any provision of this Act or the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), subject to the discretion of the Attorney General to determine the validity of any such lien or mortgage and the amount of payment to be made; and

(D) disbursements authorized in connection with remission and mitigation procedures relating to property forfeited under this Act or the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.).

(2) Any reward paid from the fund for information concerning a forfeiture shall be paid at the discretion of the Attorney General or his delegate, except that the authority to pay a reward of $10,000

or more shall not be delegated to any person other than the Deputy Attorney General, the Associate Attorney General, the Director of the Federal Bureau of Investigation, or the Administrator of the Drug Enforcement Administration. Any reward for such information shall not exceed the lesser of $150,000 or one quarter of the amount realized by the United States from the property forfeited.

(3) There shall be deposited in the fund all amounts remaining after payment of expenses for forfeiture and sale under subsection (e) of this section.

(4) Amounts in the fund which are not currently needed for the purpose of this section shall be kept on deposit or invested in obligations of, or guaranteed by, the United States.

(5) The Attorney General shall transmit to the Congress, not later than four months after the end of each fiscal year a detailed report on the amounts deposited in the fund and a description of expenditures made under this subsection.

(6) The provisions of this subsection relating to deposits in the fund shall apply to all property in the custody of the Department of Justice on or after the effective date of the Comprehensive Forfeiture Act of 1983.

(7) For the purposes described in paragraph (1)(A), (B), and (C), there are authorized to be appropriated from the fund for fiscal year 1984 not more than $10,000,000, for fiscal year 1985 not more than $15,000,000, for fiscal year 1986 not more than $20,000,000, and for fiscal year 1987 not more than $20,000,000. For fiscal years 1984, 1985, 1986, and 1987, there are authorized to be appropriated such amounts as may be necessary for the purpose described in paragraph (1)(D). Amounts in the fund in excess of the amounts appropriated at the end of each fiscal year shall be deposited in the General Fund of the United States Treasury. At the end of the last fiscal year for which appropriations from the fund are authorized by this Act, the fund shall cease to exist and any amount then remaining in the fund shall be deposited in the General Fund of the Treasury of the United States.

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TITLE III—IMPORTATION AND EXPORTATION; AMENDMENTS AND REPEALS OF REVENUE LAWS

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PART A—IMPORTATION AND EXPORTATION

* * * * * * *

AUTHORITY OF SECRETARY OF TREASURY

SEC. 1016. Nothing in this Act shall derogate from the authority of the Secretary of the Treasury under the customs and related laws.

CRIMINAL FORFEITURES

SEC. 1017. Section 413 of title II, relating to criminal forfeitures, shall apply in every respect to a violation of this title punishable by imprisonment for more than one year.

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TITLE 19: CUSTOMS DUTIES

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CHAPTER 4—TARIFF ACT OF 1930

* * * * * * *

PART V—ENFORCEMENT PROVISIONS

Sec.

1588. Transportation between American ports via foreign ports.
1589. Arrest authority of customs officers.
1600. Application of the customs laws to other seizures by customs officers.

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§ 1602. Seizure; report to customs officers.

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1605. Seizure; custody; storage.
1606. Seizure; appraisement.
1607. [Seizure; value $10,000 or less.] *Seizure; value $100,000 or less, prohibited articles, transporting conveyances.*
1608. Seizure; claims; judicial condemnation.
1609. Seizure; summary of forfeiture and sale.
1610. Seizure; value more than $10,000.
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1613a. Customs Forfeiture Fund.
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1623. Bonds and other security.
(a) Requirement of bond by regulation.
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1624. General regulations.
1625. Publication of decisions.

PART VI—MISCELLANEOUS PROVISIONS

1644. Application of section 177 of Title 49.

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§ 1589. Arrest authority of customs officers

Subject to the direction of the Secretary of the Treasury, an officer of the Customs Service as defined in section 401(i) of this Act, as amended, may—

(1) carry a firearm;

(2) execute and serve any order, warrant, subpena, summons, or other process issued under the authority of the United States;

(3) make an arrest without a warrant for any offense against the United States committed in the officer's presence or for a felony, cognizable under the laws of the United States committed outside the officer's presence if the officer has reasonable grounds to believe that the person to be arrested has committed or is committing a felony; and

(4) perform any other law enforcement duty that the Secretary of the Treasury may designate.

* * * * * * *

§ 1600. Application of the customs laws to other seizures by customs officers

The procedures set fourth in section 602 through 619 of this Act (19 U.S.C. 1602 through 1619) shall apply to seizures of any property effected by customs officers under any law enforced or administered by the Customs Service unless such law specifies different procedures.

* * * * * * *

§ 1602. Seizure; report to customs officer

It shall be the duty of any officer, agent, or other person authorized by law to make seizures of merchandise or baggage subject to seizure for violation of the customs laws, to report every such seizure immediately to the appropriate customs officer for the district in which such violation occurred, and to turn over and deliver to such customs officer any vessel, vehicle, *aircraft,* merchandise, or baggage seized by him, and to report immediately to such customs officer every violation of the customs laws.

* * * * * * *

§ 1605. Seizure; custody; storage

All vessels, vehicles, *aircraft,* merchandise, and baggage seized under the provisions of the customs laws, or laws relating to the navigation, registering, enrolling or licensing, or entry or clearance, of vessels, unless otherwise provided by law, shall be placed and remain in the custody of the appropriate customs officer for the district in which the seizure was made to await disposition according to law.

Pending such disposition, the property shall be stored in such place as, in the customs officer's opinion, is most convenient and appropriate with due regard to the expense involved, whether or not the place of storage is within the judicial district or the customs collection district in which the property was seized; and storage of the property outside the judicial district or customs collec-

tion district in which it was seized shall in no way affect the jurisdiction of the court which would otherwise have jurisdiction over such property.

§ 1606. Seizure; appraisement

The appropriate customs officer shall determine the domestic value, at the time and place of appraisement, of any vessel, vehicle, *aircraft,* merchandise, or baggage seized under the customs laws.

[§ 1607. Seizure; value $10,000 or less

[If such value of such vessel, vehicle, merchandise, or baggage does not exceed $10,000, the appropriate customs officer shall cause a notice of the seizure of such articles and the intention to forfeit and sell or otherwise dispose of the same according to law to be published for at least three successive weeks in such manner as the Secretary of the Treasury may direct. For the purposes of this section and sections 1610 and 1612 of this title merchandise the importation of which is prohibited shall be held not to exceed $10,000 in value.]

§ 1607. Seizure; value $100,000 or less, prohibited articles, transporting conveyances

(a) if—

(1) the value of such seized vessel, vehicle, aircraft, merchandise, or baggage does not exceed $100,000;

(2) such seized merchandise consists of articles the importation of which is prohibited; or

(3) such seized vessel, vehicle, or aircraft was used to import, export, or otherwise transport or store any controlled substances;

the appropriate customs officer shall cause a notice of the seizure of such articles and the intention to forfeit and sell or otherwise dispose of the same according to law to be published for at least three successive weeks in such manner as the Secretary of the Treasury may direct. Written notice of seizure together with information on the applicable procedures shall be sent to each party who appears to have an interest in the seized article.

(b) As used in this section, the term "controlled substance" has the meaning given that term in section 102 of the Controlled Substances Act (21 U.S.C. 802).

§ 1608. Seizure; claims; judicial condemnation

Any person claiming such vessel, vehicle, *aircraft,* merchandise, or baggage may at any time within twenty days from the date of the first publication of the notice of seizure file with the appropriate customs officer a claim stating his interest therein. Upon the filing of such claim, and the giving of a bond to the United States in the penal sum of *$5,000 or 10 per centum of the value of the claimed property, whichever is lower, but not less than,* $250, with sureties to be approved by such customs officer, conditioned that in case of condemnation of the articles so claimed the obligor shall pay all the costs and expenses of the proceedings to obtain such condemnation, such customs officer shall transmit such claim and bond, with a duplicate list and description of the articles seized, to the United States attorney for the district in which seizure was

made, who shall proceed to a condemnation of the merchandise or other property in the manner prescribed by law.

§ 1609. Seizure; summary of forfeiture and sale

If no such claim is filed or bond given within the twenty days hereinbefore specified, the appropriate customs officer shall declare the vessel, vehicle, *aircraft,* merchandise, or baggage forfeited, and shell sell the same at public auction in the same manner as merchandise abandoned to the United States is sold, or otherwise dispose of the same according to law and shall deposit the proceeds of sale, [after deducting the actual expenses of seizure, publication, and sale in the Treasury of the United States.] *after deducting expenses enumerated in section 613 of this Act into the Customs Forfeiture Fund.*

§ 1610. Seizure; value more than $10,000

[If the value of any vessel, vehicle, merchandise, or baggage so seized is greater than $10,000,] *If any vessel, vehicle, aircraft, merchandise, or baggage is not subject to the procedure set forth in section 607,* the appropriate customs officer shall transmit a report of the case, with the names of available witnesses, to the United States attorney for the district in which the seizure was made for the institution of the proper proceedings for the condemnation of such property.

§ 1611. Seizure; sale unlawful

If the sale of any vessel, vehicle, *aircraft,* merchandise, or baggage forfeited under the customs laws in the district in which seizure thereof was made be prohibited by the laws of the State in which such district is located, or if a sale may be made more advantageously in any other district, the Secretary of the Treasury may order such vessel, vehicle, *aircraft,* merchandise, or baggage to be transferred for sale in any customs district in which the sale thereof may be permitted. Upon the request of the Secretary of the Treasury, any court may, in proceedings for the forfeiture of any vessel, vehicle, *aircraft,* merchandise, or baggage under the customs laws, provide in its decree of forfeiture that the vessel, vehicle, *aircraft,* merchandise, or baggage, so forfeited, shall be delivered to the Secretary of the Treasury for disposition in accordance with the provisions of this section. If the Secretary of the Treasury is satisfied that the proceeds of any sale will not be sufficient to pay the costs thereof, he may order a destruction by the customs officers: *Provided,* That any merchandise forfeited under the customs laws, the sale or use of which is prohibited under any law of the United States or of any State, may, in the discretion of the Secretary of the Treasury, be destroyed, or remanufactured into an article that is not prohibited, the resulting article to be disposed of to the profit of the United States only.

§ 1612. Seizure; summary sale

Whenever it appears to the appropriate customs officer that any vessel, vehicle, *aircraft,* merchandise, or baggage seized under the customs laws is liable to perish or to waste or to be greatly reduced in value by keeping, or that the expense of keeping the same is dis-

proportionate to the value thereof, [and the value of such vessel, vehicle, merchandise, or baggage as determined under section 1606 of this title, does not exceed $10,000,] *and the article is subject to the provisions of section 607 of this Act,* and such vessel, vehicle, *aircraft,* merchandise, or baggage has not been delivered under bond, such officer shall, proceed forthwith to advertise and sell the same at auction under regulations to be prescribed by the Secretary of the Treasury. [If such value of such vessel, vehicle, merchandise, or baggage exceeds $10,000,] *If the article is not subject to the provisions of section 607 of this Act,* such officer shall forthwith transmit the appraiser's return and his report of the seizure to the United States attorney, who shall petition the court to order an immediate sale of such vessel, vehicle, *aircraft,* merchandise, or baggage, and if the ends of justice require it the court shall order such immediate sale, the proceeds thereof to be deposited with the court to await the final determination of the condemnation proceedings. Whether such sale be made by the customs officer or by order of the court, the proceeds thereof shall be held subject to claims of parties in interest to the same extent as the vessel, vehicle, *aircraft,* merchandise, or baggage so sold would have been subject to such claim.

§ 1613. Disposition of proceeds of forfeited property

(a) Except as provided in subsection (b) of this section, any person claiming any vessel, vehicle, *aircraft,* merchandise, or baggage, or any interest therein, which has been forfeited and sold under the provisions of this chapter, may at any time within three months after the date of sale apply to the Secretary of the Treasury if the forfeiture and sale was under the customs laws, or if the forfeiture and sale was under the navigation laws, for a remission of the forfeiture and restoration of the proceeds of such sale, or such part thereof as may be claimed by him. Upon the production of satisfactory proof that the applicant did not know of the seizure prior to the declaration or condemnation of forfeiture, and was in such circumstances as prevented him from knowing of the same, and that such forfeiture was incurred without any willful negligence or intention to defraud on the part of the applicant, the Secretary of the Treasury may order the proceeds of the sale, or any part thereof, restored to the applicant, after deducting the cost of seizure and of sale, the duties, if any, accruing on the merchandise or baggage, and any sum due on a lien for freight, charges, or contribution in general average that may have been filed. If no application for such remission or restoration is made within three months after such sale, or if the application be denied by the Secretary of the Treasury, the proceeds of sale shall be disposed of as follows:

(1) For the payment of all proper expenses of the proceedings of forfeiture and sale, including expenses of seizure, maintaining the custody of the property, advertising and sale, and if condemned by a decree of a district court and a bond for such costs was not given, the costs as taxed by the court;

(2) For the satisfaction of liens for freight, charges, and contributions in general average, notice of which has been filed with the appropriate customs officer according to law; and

[(3) The residue shall be deposited with the Treasurer of the United States as a customs or navigation fine.]

(3) The residue shall be deposited in the Customs Forfeiture Fund.

§ 1613a. Customs Forfeiture Fund

(a) There is hereby established in the Treasury of the United States a special fund for the United States Customs Service that shall be entitled the "Customs Forfeiture Fund" (hereinafter referred to in this section as the "fund"). This fund shall be available without fiscal year limitation in such amounts as may be specified in appropriations Acts for the following purposes of the United States Customs Service—

(1) the payment of all proper expenses of the seizure or detention or the proceedings of forfeiture and sale (not otherwise recovered under section 613(a)) including but not limited to, expenses of inventory, security, maintaining the custody of the property, advertising and sale, and if condemned by the court and a bond for such costs was not given, the costs as taxed by the court; and

(2) the payment of awards of compensation to informers under section 619 of the Tariff Act of 1930, as amended.

(b) There shall be deposited in the fund all proceeds from the sale or other disposition of property forfeited under, and any currency or monetary instruments seized and forfeited under, the laws enforced or administered by the United States Customs Service.

(c) Amounts in the fund which are not currently needed for the purposes of this section shall be kept on deposit or invested in obligations of, or guaranteed by, the United States.

(d) The Commissioner of the Customs shall transmit to the Congress, not later than four months after the end of each fiscal year a detailed report on the amounts deposited in the fund and a description of expenditures made under this section.

(e) The provisions of this section relating to deposits in the fund shall apply to all property in the custody of the United States Customs Service on or after the effective date of the Comprehensive Forfeiture Act of 1983.

(f) For the purposes described in subsection (a), there are authorized to be appropriated from the fund for fiscal year 1984 not more than $10,000,000, for fiscal year 1985 not more than $15,000,000, for fiscal year 1986 not more than $20,000,000, and for fiscal year 1987 not more than $20,000,000. Amounts in the fund in excess of the amounts appropriated at the end of each fiscal year shall be deposited in the General Fund of the Treasury of the United States. At the end of the last fiscal year for which appropriations from the fund are authorized by this Act, the fund shall cease to exist and any amount then remaining in the fund shall be deposited in the General Fund of the Treasury of the United States.

* * * * * * *

§ 1614. Release of seized property

If any person claiming an interest in any vessel, vehicle, *aircraft,* merchandise, or baggage seized under the provisions of this chapter

offers to pay the value of such vessel, vehicle, *aircraft*, merchandise, or baggage, as determined under section 1606 of this title, and it appears that such person has in fact a substantial interest therein, the appropriate customs officer may, subject to the approval of the Secretary of the Treasury if under the customs laws, or under the navigation laws, accept such offer and release the vessel, vehicle, *aircraft*, merchandise, or baggage seized upon the payment of such value thereof, which shall be distributed in the order provided in section 1613 of this title.

§ 1615. Burden of proof in forfeiture proceedings

In all suits or actions (other than those arising under section 1592 of this title) brought for the forfeiture of any vessel, vehicle, *aircraft*, merchandise, or baggage seized under the provisions of any law relating to the collection of duties on imports or tonnage, where the property is claimed by any person, the burden of proof shall lie upon such claimant; and in all suits or actions brought for the recovery of the value of any vessel, vehicle, *aircraft*, merchandise, or baggage, because of violation of any such law, the burden of proof shall be upon the defendant: *Provided*, That probable cause shall be first shown for the institution of such suit or action, to be judged of by the court, subject to the following rules of proof:

(1) The testimony or deposition of the officer of the customs who has boarded or required to come to a stop or seized a vessel or vehicle, or has arrested a person, shall be prima facie evidence of the place where the act in question occurred.

(2) Marks, labels, brands, or stamps, indicative of foreign origin, upon or accompanying mechandise [1] or containers of merchandise, shall be prima facie evidence of the foreign origin of such merchandise.

(3) The fact that a vessel of any description is found, or discovered to have been. in the vicinity of any hovering vessel and under any circumstances indicating contact or communication therewith, whether by proceeding to or from such vessel, or by coming to in the vicinity of such vessel, or by delivering to or receiving from such vessel any merchandise, person, or communication, or by any other means effecting contact or communication therewith, shall be prima facie evidence that the vessel in question has visited such hovering vessel.

"§ 1616. Disposition of forfeited property

(a) Notwithstanding any other provision of the law, the Commissioner is authorized to retain forfeited property, or to transfer such property on such terms and conditions as he may determine to—

(1) any other Federal agency; or

(2) any State or local law enforcement agency which participated directly in any of the acts which led to the seizure or forfeiture of the property.

The United States shall not be liable in any action arising out of the use of any property the custody of which was transferred pursuant to this section to any non-Federal agency.

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[1] So in original. Probably should read "merchandise".

(b) The Secretary of the Treasury may order the discontinuance of any forfeiture proceedings under this Act in favor of the institution of forfeiture proceedings by State or local authorities under an appropriate State or local statute. After the filing of a complaint for forfeiture under this Act, the Attorney General may seek dismissal of the complaint in favor of forfeiture proceedings under State or local law.

(c) Whenever forfeiture proceedings are discontinued by the United States in favor of State or local proceedings, the United States may transfer custody and possession of the seized property to the appropriate State or local official immediately upon the initiation of the proper actions by such officials.

(d) Whenever forfeiture proceedings are discontinued by the United States in favor of State or local proceedings, notice shall be sent to all known interested parties advising them of the discontinuance or dismissal. The United States shall not be liable in any action arising out of the seizure, detention, and transfer of seized property to State or local officials.

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§ 1618. Remission or mitigation of penalties

Whenever any person interested in any vessel, vehicle, *aircraft,* merchandise, or baggage seized under the provisions of this chapter, or who has incurred, or is alleged to have incurred, any fine or penalty thereunder, files with the Secretary of the Treasury under the customs laws or under the navigation laws, before the sale of such vessel, vehicle, *aircraft,* merchandise, or baggage a petition for the remission or mitigation of such fine, penalty, or forfeiture, the Secretary of the Treasury, if he finds that such fine, penalty, or forfeiture was incurred without willful negligence or without any intention on the part of the petitioner to defraud the revenue or to violate the law, or finds the existence of such mitigating circumstances as to justify the remission or mitigation of such fine, penalty, or forfeiture, may remit or mitigate the same upon such terms and conditions as he deems reasonable and just, or order discontinuance of any prosecution relating thereto. In order to enable him to ascertain the facts, the Secretary of the Treasury may issue a commission to any customs officer to take testimony upon such petition: *Provided,* That nothing in this section shall be construed to deprive any person of an award of compensation made before the filing of such petition.

§ 1619. Award of compensation to informers

Any person not an officer of the United States who detects and seizes any vessel, vehicle, *aircraft,* merchandise, or baggage subject to seizure and forfeiture under the customs laws or the navigation laws, and who reports the same to an officer of the customs, or who furnishes to a United States attorney, to the Secretary of the Treasury, or to any customs officer original information concerning any fraud upon the customs revenue, or a violation of the customs laws or the navigation laws, perpetrated or contemplated, which detection and seizure or information leads to a recovery of any duties withheld, or of any fine, penalty, or forfeiture incurred, may

be awarded and paid by the Secretary of the Treasury a compensation of 25 per centum of the net amount recovered, but not to exceed [$50,000] *$150,000* in any case, which shall be paid out of any appropriations available for the collection of the revenue from customs. For the purposes of this section an amount recovered under a bail bond shall be deemed a recovery of a fine incurred. If any vessel, vehicle, *aircraft,* merchandise, or baggage is forfeited to the United States, and is thereafter, in lieu of sale, destroyed under the customs or navigation laws or delivered to any governmental agency for official use, compensation of 25 per centum of the appraised value thereof may be awarded and paid by the Secretary of the Treasury under the provisions of this section, but not to exeed [$50,000], *$150,000* in any case. *In no event shall the Secretary delegate the authority to pay an award under this section in excess of $10,000 to an official below the level of the Commissioner of Customs.*

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[§ 1644. Application of section 177 of Title 49

[The authority vested by section 177 of Title 49 in the Secretary of the Treasury, and in the Commissioner of Customs, by regulation to provide for the application to civil air navigation of the laws and regulations relating to the administration of customs, and of the laws and regulations relating to the entry and clearance of vessels, respectively, shall extend to the application in like manner of any of the provisions of this chapter or of any regulations promulgated hereunder.]

§ 1644. Application of the Federal Aviation Act and section 1518(d) of title 33

(a) The authority vested by section 1109 of the Federal Aviation Act of 1958 (49 U.S.C. 1509) in the Secretary of the Treasury, by regulation to provide for the application to civil air navigation of the laws and regulations relating to the administration of customs, and of the laws and regulations relating to the entry and clearance of vessels, shall extend to the application in like manner of any of the provisions of this Act, or of the Anti-Smuggling Act of 1935, or of any regulations promulgated hereunder.

(b) For purposes of section 1518(d) of Title 33, the term "customs laws administered by the Secretary of the Treasury" shall mean this chapter and any other provisions of law classified to this title.

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TITLE 26: INTERNAL REVENUE CODE

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Subtitle F—Procedure and Administration

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Subchapter A—Examination and Inspection

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CHAPTER 78.—DISCOVERY OF LIABILITY AND ENFORCEMENT OF TITLE

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Sec.
7601. Canvass of districts for taxable persons and objects.
7602. Examination of books and witnesses.
7603. Service of summons.
7604. Enforcement of summons.
7605. Time and place of examination.
7606. Entry of premises for examination of taxable objects.
[7607. Additional authority for Bureau of Narcotics and Bureau of Customs.]
7608. Authority of internal revenue enforcement officers.
7609. Cross references.

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[§ 7607. Additional authority for Bureau of Narcotics and Bureau of Customs

[The Commissioner, Deputy Commissioner, Assistant to the Commissioner, and agents, of the Bureau of Narcotics of the Department of the Treasury, and officers of the customs (as defined in section 401(1) of the Tariff Act of 1930, as amended; 19 U.S.C., sec. 1401(1)), may—

[(1) carry firearms, execute and serve search warrants and arrest warrants, and serve subpenas and summonses issued under the authority of the United States, and

[(2) make arrests without warrant for violations of any law of the United States relating to narcotic drugs (as defined in section 4731) or marihuana (as defined in section 4761) where the violation is committed in the presence of the person making the arrest or where such person has reasonable grounds to believe that the person to be arrested has committed or is committing such violation.]

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